Does Cyberspace outdate Jurisdictional Defamation Laws?

Muhammad Usman

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ABSTRACT

Muhammad Usman

Does Cyberspace Outdate Jurisdictional Defamation Laws?

Keywords: Cyberspace Regulation, Internet Jurisdiction, Choice of Law, Defamation in Social Media, Libel, Private International Law, Foreign Defendant, Civil Procedure Rules, The Defamation Act 2013

Cyberspace produces friction when the law is implemented by domestic courts using 'state-laws'. These laws are based on a ‘physical presence’ of an individual within the territory. It elevates conflicts relating to cyberspace jurisdiction. This research examines private international law complications associated with cyberspace. The paradigm of libel that takes place within the domain of social media is used to evaluate the utility of traditional laws. This research is conducted using ‘black-letter’ methodology, keeping in mind the changes constituted by the Defamation Act 2013. It pinpoints that the instantaneous nature of social media communication demands an unambiguous exercise of 'personal-jurisdiction', beyond the doctrine of territoriality. An innovation to the code of Civil Procedure is recommended to revise the process of service for non-EU defendants. The permission to serve a writ via social networks (or to the relevant Embassy of the defendant’s domicile state), can accelerate the traditional judicial process.

This thesis can be utilised as a roadmap by libel victims for preliminary information. It contributes to the knowledge by discovering that the thresholds under Section 1 and Section 9 of the Defamation Act 2013 overlap with the conventional ‘forum-conveniens’ tests. This crossover is causing legal uncertainty in the application of existing rules to the digital libel proceedings. Section 1 and Section 9 thresholds do not fulfil the purpose of eliminating ‘libel-tourism’ and maintaining a balance between speech freedom and reputation rights. They raised the bar for potential victims and restricted their rights to justice. It is proposed that the traditional ‘conveniens test’ must be used for social media libel victims to produce legal certainty in cyberspace defamation.

DEDICATIONS

I dedicate this research to the victims of online libel who suffered because of the inadequacy in the application of traditional laws to the digital medium of social media…!

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THE PROSPECT OF THIS RESEARCH

This research determines the problems that arise when private international law rules are applied to cross-border defamation disputes. This research has three broad areas that act as a foundation:

1. Private international law
2. Cyberspace
3. Defamation

THE PROSPECT OF THIS THESIS

This thesis evaluates jurisdictional issues associated with cyberspace, with a focus on libel arising in social media. Social media for this thesis includes social networking, email and smartphone-text, but it is also relevant to other embodiment of communication by telephone, radio communication or print media. To complete this research at PhD level, this thesis will focus on the following sub-categories:

1. Personal jurisdiction
2. Social media
3. Libel

THE NOVELTY OF THIS RESEARCH

The legal effects of the meteoric amplification in social communication have not been academically analysed. This thesis will contribute to the interpretation and application of the Defamation Act 2013 and evaluate the misconceptions found in the use of the traditional legal framework to libellous statements published via social media. The novelty of this thesis lies in the comparison that social communication incentivises the sharing of opinions without fact checking whereas other broadcasting media have a fact-checking mandate. Can they all be liable under the same rules?

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CHAPTERS

The following chapters will discuss all required areas to determine whether 'cyberspace does or does not invalidate traditional jurisdiction laws which are based on territory'.

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LIST OF ABBREVIATIONS

ABBREVIATIONS	MEANING
All ER	All England Reports
AJCL	American Journal of Comparative Law
ARPANET	Advanced Research Projects Agency Network
CPR	Civil Procedure Rules
CLR	Commonwealth Law Reports
CA	Court of Appeal
CLSR	Computer Law and Security Report
CLS Rev	Computer Law and Security Review
Ch.	Chapter
COM	Commercial Organisation
CJEU	Court of Justice of the European Union
CUP	Cambridge University Press
DPA 1998	Data Protection Act 1998
Ent LR	Entertainment Law Review
ECHR	European Convention on Human Rights 1950
EJCL	Electronic Journal of Comparative Law
EWHC	England and Wales High Court
HCtUK	High Court of the United Kingdom
HRA	Human Rights Act 1998
IRLCT	International Review of Law, Computers & Technology
ICANN	Internet Corporation for Assigned Names & Numbers
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
ISP	Internet Service Provider
IAP	Internet Access Provider
JILT	Journal of Information Law and Technology
JPIL	Journal of Private International Law
LAN	Local Area Network
LRQB	Law Reports, Queen's Bench
NATO	North Atlantic Treaty Organization
PIL	Private International Law
QBD	Queens Bench Division
SNS	Social Networking Service
SCLR	Scottish Civil Law Reports
UGC	User Generated Contents
UKHL	United Kingdom House of Lords
URL	Uniform Resource Location
UKSC	United Kingdom Supreme Court
VLR	Victorian Law Reports
WAN	Wide Area Networks
WWW	World Wide Web
Yale LJ	Yale Law Journal

Related Legal Terms

Note: This thesis is not gender specific; however, it will use 'him' as abbreviation of him/her

1. **Author -** The originator of a statement; in social media libel it also includes an individual who did not intend to publish his statement at all.
2. **Address** – A location that can be specifically referred to in a program. It can refer to a storage location, a terminal, a peripheral device, a cursor location or any other unit or component in a computer network.
3. **Anonymity –** Lacking any distinguishing feature, this can enable the identification of its originator. It also refers to the situation when the IP address of a defendant cannot be traced.
4. **Broadcast –** The simultaneous transmission of an electronic message to a number of receiving locations.
5. **Civil Legal action –** A claim for remedy brought in civil court, where one person claims to have suffered a reputational loss due to the actions of the defendant.
6. **Civil Remedies** – The means by which a right is enforced or by which the violation of a right is prevented or compensated. Also, the means employed to enforce a right or to redress an injury.
7. **Claim -** The formal assertion of a cause of action by one person (the claimant) against another (the defendant). A claim is initiated when a claim form is issued by a court at the request of the claimant. It is also known as Proceedings or a Case.
8. **Consent** – To agree, approve, permit, comply, or yield
9. **Communication** – It refers to any information/idea/statement which is exchanged/conveyed using a publicly available electronic communications service.
10. **Defendant** – A party against whom a claim is filed in civil court, or who has been accused of, or charged with an offence; a respondent
11. **Damages** – A monetary compensation for a financial loss, or damage to privacy rights or reputation
12. **Default judgment** – A judgment in favour of the claimant when the defendant fails to respond or refuse to appear before the court at the hearing

13. **Editor** – A person having editorial or equivalent responsibility for the content of the statement or the decision to publish it
14. **Economic Loss –** Financial loss incurred by the claimant due to the acts of the defendant
15. **Freedom of Speech –** Art 10, provides the liberty to express freely, say with freedom, as well as the related liberty to hear what others say. The freedom extends to create and distribute movies, pictures, songs, dances, and all other forms of expressive communication. However, there are some restrictions.
16. **Liability -** The legal responsibility that one has over acts or omissions. If a person or entity fails to meet such responsibilities becomes open to a claim for damages that may result
17. **Monetary Damages** – It is awarded by a court where a judge concludes that the claimant suffered the loss of reputation caused by the defamation of the defendant, the defendant becomes liable to pay for monetary damages.
18. **Malice** – For this thesis it is an intent to inflict personal injury to reputation. It is an evil intention, which causes suffering of another; in case of public figure the element of malice is paramount
19. **Opinion** – A judgment formed about something, which is not necessarily based on knowledge or fact.
20. **Publisher –** For this thesis any social media user who uploads/share will be a potential publisher. Whereas, commercial publisher is someone whose business issus material to the public (or a section of the public)[1]
21. **Publication** – The act of making something known; anything shared via social media will be classed as publication in libel cases
22. **Privacy -** The ability of an individual/group to stop personal information being shared or becoming known to others. (It excludes the individuals/authorities those whom they choose to give the information to)
23. **Reputation** – A prevailing opinion that someone or something has a specific characteristic; the way in which people think of someone.
24. **Service Provider -** Any public/private entity that allows its users the ability to communicate using a computer system, or any entity that processes/stores data on behalf of such communication service.

[1] Section 10 (2) of the 2013 Act provides that the terms 'author', 'editor' and 'publisher' in this context have the same meaning as in Section 1 of the Defamation Act 1996

25. **Service -** Steps required by rules of court to bring documents used in court proceedings to a person's attention (CPR rules)
26. **Summary judgment** – It is also called judgment as a matter of law; when judge decides a case in favour of one party without full hearing trial
27. **User -** Any natural person using a publicly available electronic communications service, for private or business purposes
28. **URL -** Uniform Resource Locator (URL): The specific global address of documents and other resources on the World Wide Web
29. **Web Page -** Pages on the World Wide Web with links which enable navigation from one page or section to another

Glossary

The terms defined below, are used with the following meaning unless otherwise indicated:

1. **Defamation:** Violation of the right to personal and professional reputation
2. **Libel:** A published/written false statement that is damaging to a person's reputation
3. **Slander:** A false spoken statement, which is damaging to a person's reputation
4. **Tortfeasor:** A wrongdoer or a person who commits a tort; a social media user who publishes defamatory material, which may injure other's reputation and for which the defamation law provides a legal right to seek relief; it is also called a defendant in a civil tort action[2]
5. **England:** England and Wales
6. **Intermediary:** It refers to a company that facilitates the use of the Internet. In this thesis it refers to internet service providers (ISPs); however, it is different from content providers, search engines and social media platforms[3].
7. **English law:** In this thesis, it refers to the legal system of England and Wales.
8. **Internet:** It will be used as a metaphor for cyberspace. It is a diverse online communication service including WWW, social media platforms, mobile apps and other applications.
9. **Uploader:** In this thesis, a publisher will refer to as 'uploader'. A person legal/private, who places data online. For a legal person, this term "publisher" also covers the act or omission of its employee(s)
10. **State:** In this thesis, it will refer to an independent, sovereign, self-governing political entity that is recognised by the international community as such. An independent country.

[2] Bouvier, J., (1856), 'A Law Dictionary, Adapted to the Constitution and Laws of the United States' pp ix
[3] Leng, K., (2015), 'Internet defamation and the online intermediary', Computer Law & Security Review, Vol 31, Issue 1, pp 68-77

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SECTION 1:

Introduction of Method and Literature

[CH. 1; CH. 2 and CH. 3]

CHAPTER 1

THE FOUNDATION

This chapter moves from the grounded base of this research towards the emergence of this topical area. To simplify these founding principles, this chapter is divided into two parts:

Part A - Background of this research
Part B - Structure of this thesis

Part - A

Background of the Research

1.1.: Synopsys of this research:

This preface gives a snapshot of overall research by outlining:

a. The problem
b. Where it arises
c. The suitable method
d. How it can be resolved

a. The evolution of the problem:

There is a conflict between the nature of 'national sovereignty' and how the internet operates[4]. Sovereignty is the manifestation of a country's control, which, for the most part, is fixed by international boundaries[5]. Throughout most of history, it has been impermeable with movements being regulated by the state through various agencies such as border control and customs. Individuals moved in and out of the state physically and could send physical mail to other countries. The advent of radio communications changed these dynamics and the internet represents another fundamental change in how information is exchanged and influence manifested[6]. The control of borders is regulated by government, which in itself can manifest in a variety of forms: In the UK a sovereign parliament legislates and the courts interpret this legislation within state frontiers. Various institutions of state such as the army and intelligence services provide security through a variety of means. Often, interactions with other states and individuals take place between both physical and intangible borders. The very nature of a boundary indicates a transition from one thing to another; state boundaries, once simple things, have been complicated by the emergence of the internet, which further complicates the

[4] Manea, A. C., (2017), 'The security of personal data of users in online socialization networks: Legal aspects', Transilvania University of Brasov, Series VII, Social Sciences Law, Vol 10, Issue1, pp 179-186.
[5] Szigeti, P. D., (2017), 'The illusion of territorial jurisdiction', Texas International Law Journal, Vol 52, Issue 3, pp 369-399.
[6] *Dow Jones v Gutnick* [2002] HCA 56; the internet is a telecommunications network that links other telecommunication networks. It enables inter-communication using multiple data-formats, among an unprecedented number of people using an unprecedented number of devices [and] among people and devices without geographic limitation.

idea of international interactions[7]. These international interactions are partially delineated by various bilateral and multilateral international agreements, which outline the rights and responsibilities of the states involved in the compact[8]. However, the rise of cyberspace transactions and online communication challenges the core concept of material territoriality jurisprudence[9].

b. <u>Cyberspace:</u>

Cyberspace[10] now facilitates global communication and to a certain extent, within the remit of certain activities, it renders national borders irrelevant and creates jurisdictional conflicts[11]. Although in arguing that the internet creates a new method to pass through borders, it can be similarly argued that, certain types of interaction (for example the intangible nature of electronic mail) do not leave the confines of the state (see-2.3.2). On the other hand, electronic communication could in theory move between two accounts held on a server located outside the nation-state[12]. The transactions, which were once at the core of jurisdiction, have moved into cyberspace and in doing so, have presented various difficulties to domestic courts in assuming any jurisdiction[13] (see-6.2, 6.6.1).

[7] The fundamental difficulty in coping with legal relationships involving foreign elements flows from the fact that the legal systems of more than one country may be involved. The application of the laws of one system, rather than that of the other, will lead to different results.

[8] Daskal, J., (2018), 'Borders and bits', Vanderbilt Law Review, Vol 71, Issue 1, pp 179-240; the ease and speed with which data travels across borders, the seemingly arbitrary paths it takes, and the physical disconnect between where data is stored and where it is accessed critically test these foundational premises.

[9] Daskal, J., (2015), 'The Un-territoriality of Data', Yale Law Journal, Vol 125, pp 365-78 ; territoriality, after all, depends on the ability to define the relevant "here" and "there," and it presumes that the "here" and "there" have normative significance.

[10] It is probably the world's first true mass media because it allows anyone with a few simple tools to communicate ideas to thousands of persons at once. It inspires tolerance and promotes mutual understanding by connecting people around the world [Beeson, A., (1996), 'Top ten threats to civil liberties in cyberspace', ABA, Vol 23 Issue 2, pp 10-13].

[11] Rahman, A., (2015), 'Personal Jurisdiction on the Internet: A Global Perspective, Journal of Internet Commerce', Vol 14, Issue 1, pp 114-122; the service of court documents on defendant while in England and Wales establishes English jurisdiction. The presence of the foreign defendant in English territory also denotes his or her acceptance of the jurisdiction of the English court.

[12] Daskal, J., (2018), 'Borders and bits', Vanderbilt Law Review, Vol 71, Issue 1, pp 179-240.

[13] Cyberspace is a complex, anarchic, and multi-national environment where old concepts of regulation, reliant as they are upon tangibility in time and space, may not be easily applicable or enforceable.

An internet user can simultaneously be present everywhere in the world[14] (see-2.3.1.1). This kind of global accessibility brings benefits; however, governance at a state level becomes problematic. Should a cyberspace[15] user be subject to the governance of every country's judicial system? If an internet user writes a defamatory blog on his computer in Bradford, can he be subject to the legal system of all the sovereign states worldwide[16]? A myriad legal questions arise but at their heart is the concept of sovereignty, the control a country has over the actions of its citizens[17].

c. **Private international law:**

Private international law is of importance here; it is best described as a legal framework comprising a diverse set of documents and instruments forming conventions and protocols[18]. It relates to the determination of conflicts resulting from a wide diversity of courts and the accompanying diversity of approaches to law in sovereign states[19]. This framework is supplemented by case law that regulates the wide variety of interactions that take place between individuals in an international context[20]. Private international law rules are based on a variety of factors; they can include the physical presence, nationality, domicile or geographical location[21] and this, in turn, results in territorial laws only operating within physical borders[22].

[14] Jimenez, W., & Lodder, A., (2015), 'Analysing Approaches to Internet Jurisdiction Based on a Model of Harbours and the High Seas', IRLCT, Vol 29, pp 266-268; the Internet has the ability to exert effect in many places at once.

[15] William Gibson used this term in 1948 in a novel 'Neuromancer'. He described it as a futuristic computer network, which people will use by plugging their minds into it; Smith, P. A., (2014), 'Conversations with William Gibson', (1st Ed, University Press of Mississippi, jstore), pp xi-xxiv.

[16] Cyber-space cannot fulfil its promise of knowledge and freedom, if web sites continue to be subject to hundreds of conflicting procedural and substantive rules simply because the material can be accessed in every nation of the globe.

[17] Reed, C., (2012), 'Making Laws for Cyberspace', (OUP, Oxford University, UK), pp 13-14; most individuals have only a general impression of the rules of their own national law, and are likely to be completely ignorant of the multiplicity of foreign laws which claim to apply to their cyberspace activities.

[18] Dickinson, A., (2016), 'Back to the future: the UK's EU exit and the conflict of laws', Journal of Private International Law, Vol 12, Issue 2, pp 195-210.

[19] Michael, D., (2017), 'A consideration of current issues in private international law', Australian Bar Review, Vol 44, Issue 3, pp 338; Conflict of laws (2017), Britannica Academic, http://academic.eb.com/levels/collegiate/article/conflict-of-laws/109442 [Assessed 27th June 2018]

[20] *Modamani vs Facebook* [2017], *Arlewin v Sweden* [2016], *Orlovskaya Iskra v Russia* [2017], *Ilsjan Case* [2016], *Sloutsker v Romanova* [2015], *Ahuja v Politika* [2015]; these cases are detailed at 7.6.

[21] *American Banana Co. v United Fruit Co* [1909] 213 US 347, 357; established that any statute is presumed to be intended to operate within the territorial limits of the sovereign state.

[22] Mills, A., (2014), 'Rethinking Jurisdiction in International Law', The British Yearbook of International Law, Vol 84, Issue 1, pp 187–239.

It can be argued that there is an urgent need to authenticate the validity of the application of private international law in cyberspace[23] or implement significant changes within the current legal framework[24]. The principles behind private international law developed long before the advent of the internet[25]. Today, the location of online activity is never extensively assured due to problems with the:

1. Classification of place[26]: Is it the location where the defamatory material was written, published, downloaded or where it affected the individual?
2. Disguise[27]: Is the location traceable, encrypted, or re-routed?

d. Jurisdiction after the Defamation Act 2013:

Jurisdiction is determined by national civil procedural rules which indicate the value, validity and articulation of law (see-6.9.1). The term 'jurisdiction' is derived from Latin 'juris-dictio'[28], which determines a state's extraterritorial power over a foreign defendant. Importantly, exercise of personal jurisdiction does not mean that a judge is empowered in one state to rule on the jurisdiction of a foreign state (see-7.7). A court will contravene international policies by exercising jurisdiction over a foreign national without following due process[29]. English due process is based on the service of a writ which allows the courts to exercise jurisdiction over a non-EU foreign defendant (See-4.2, 6.9). The defendant can also contest jurisdiction by challenging the court not to exercise its jurisdiction if there is another appropriate forum[30]. The effect of this

[23] Svantesson, D.J.B., (2016), 'Nostradamus lite - selected speculations as to the future of internet jurisdiction', Masaryk University Journal of Law and Technology, Vol 30, Issue 1, pp 47 – 72.
[24] Svantesson, D. J. B., (2016), 'International law and order in cyberspace—cloud computing and the need to revisit the foundations of jurisdiction', Aspen Review Central Europe, Vol 1, pp 88 – 92.
[25] Conflict of law principles in cyberspace have been inadequately served by traditional principles established over centuries. The judges formed new approaches to tackle social media defamation, which is unlike the static occurrences (see-7.7). A defamatory statement can be published worldwide. The courts have had to reconsider the single publication rule, and the applicability of local laws to a website intended for another jurisdiction, but with global reach (see-7.2,7.3, 7.13).
[26] Briggs, A., (2008), 'Agreements on Jurisdiction and Choice of Law' (3rd Ed, Oxford Private International Law Series, OUP), pp 55.
[27] Lutzi, T., (2017), 'Internet cases in EU private international law: Developing a coherent approach', The International and Comparative Law Quarterly, Vol 66, Issue 3, pp 687.
[28] Dorsett, S., & McVeigh, S., (2007), 'Jurisprudence of Jurisdiction' (1st Ed, Oxon : Routledge - Cavendish, New York), pp 3; saying or speaking of the law.
[29] *Fire Clean, LLC v Andrew Tuohy* [2016] WL 3952093; a state, after following due-process, exercises its judicial power over a foreign-defendant, if he intentionally directs his online activity in that state
[30] This is called forum non conveniens test – (see 2.7.2, 2.17.1, 6.9.1.2).

jurisdictional based problem is not limited to a particular field of law[31]. However, this research will focus on civil disputes based within the area of defamation.

The introduction of the Defamation Act 2013 failed to address certain areas in relation to cyberspace (see-7.3). For instance, Section 9 set the rules for exercising jurisdiction, but its interpretation becomes confusing for social media libel (see-7.7). Analysis of the provisions of the 2013 Act demonstrates that the solution of 'cyber-defamation' must not be limited to the government regulations[32] (see-2.13.1) but the judiciary, legislators, practitioners and academics must all contribute to interpreting an appropriate framework regarding defamation and cyberspace jurisdiction (see-9.8, 9.9).

e. <u>Method:</u>

This research will use a conventional legal approach based upon legal rules, statutes and precedents to examine whether national jurisdictional laws are appropriate to cyberspace (see-1.8). Historically rules, in the form of state-enforced law, have developed to aid in the resolution of domestic (state-based) disputes; however, current laws may not be adequate to address the variety and scale of the challenges surrounding internet interactions[33]. The internet brings with it a staggering complexity that in turn presents a number of legal problems; anonymity is one of them (see-2.1). Anonymisation services[34] and a range of other strategies allow dark-web users to hide their identity, location and server. For instance, Tor (the Onion Router), hides a computer's IP address when accessing the site, enabling decentralised and relatively untraceable cryptocurrencies such as bitcoin and litecoin and encrypted communication between participants[35]. This idea of an information-based war where participants are

[31] The victims of intellectual property rights, cyberbullying, personality breach, identity theft, fraud and hacking involving cross-border defendants have to go through the hurdles of jurisdiction.

[32] The governments try to designs sets of laws, which can only be operated inside the states. However, with cooperation of all the stake holders a general policy can be introduced to regulate external factors; therefore, these laws may likely to be complex, inflexible, difficult to implement, and worst of all counterproductive when applied to the internet.

[33] Geographic borders may give notice that the rules change when the boundaries are crossed i.e. after crossing a boundary the person is warned to abide by the laws of the jurisdiction whereas no such notices are given to the cyberspace users.

[34] Gehl, R., (2014), 'Power/Freedom on the Dark Web: A Digital Ethnography of the Dark Web Social Network', New Media & Society, Vol 1, Issue 17.

[35] Jayswal, N., (2014), 'Attack Monitoring and Detection System using Dark IPs', International Journal of Engineering Research & Technology, Vol 3, Issue 1.

able to hide their identity and utilise social media for specific goals continues to grow in complexity[36] (see-2.1).

The legal methodology will be suitable for the issues outlined above (see-3.10). It will allow evaluation of the pros and cons of private international law rules when applied to online defamation (see-1.8). The analysis of case law will identify if there are any instances where current laws are proving to be inadequate and insufficient to assume jurisdiction (see-7.8). The precedents can be used to enhance the applicability of traditional rules at the preliminary stage, which can effectively work as damage control (courts granting an injunction at an early stage can save victims from further reputational harm) (see-7.4, 7.5, 7.16).

f. <u>The output:</u>

This research will analyse whether the application of existing 'jurisdictional laws' provides a robust and reliable set of rules to provide an adequate balance between certainty and fairness within the domain of cyberspace. This analysis will lead onto the question of the competence of courts over internet users and the wide range of disputes within the sphere. Concerning competence, one court cannot have the power and ability to trial divergent and peculiar internet transactions, without 'personal jurisdiction[37]' (see-2.6.3). Personal jurisdiction is a standard due process doctrine under civil procedural rules, which varies across the continent. In England, courts can establish 'personal jurisdiction' if the defendant is resident in England, or he has substantial connections in England, or he is served a writ in England (See-4.2, 6.9). If a court exercises its jurisdiction over a foreign defendant who is not resident in England and has no substantial connections, it will be unfair to that defendant[38]. He may want that case to be determined by the court in a different country[39] (see-6.8, 6.9.1.3).

[36] Holger, P., (2015), 'The Emergence of I-War: Changing Practices and Perception of Military Engagement in Digital Era', New Media and Society, Vol 17, Issue 1; the increasingly user-friendly interfaces and the availability of programming software imply that a higher percentage of the population can utilise these new technologies in a way that may infringe existing legislation.

[37] Spencer, A.B., (2006), 'Jurisdiction and the Internet: Returning to Traditional Principles to Analyse Network-Mediated Contacts', University of Illinois Law Review, pp 71; personal jurisdiction enables a court or legal authority to exert its power over the alleged disputes, be it cyber, digital or non-virtual.

[38] Frederick, A., (2015), 'Online defamation of California defendant did not support California personal jurisdiction', Computer and Internet Lawyer, Vol 32, Issue 4, pp 18.

[39] Defendant still have the option to challenge personal jurisdiction and the option of 'de novo review' - a new trial in which all issues are reviewed as if for the first time.

No unified cyber code nor even a single regulatory authority exists within this sphere[40]; however, cyberspace cannot be regarded outside the law (see-1.5.2). Domestic laws and even international treaties apply to cyberspace disputes; however, these disputes often lack the same predictability and certainty found in traditional conflicts[41]. This complexity is compounded when diverse legal systems from around the world are added to the internet's diverse jurisdictional mix[42]. Alongside this, each state will have a distinct enforcement mechanism that is utilised for civil and criminal matters[43] (see-1.10). In the absence of any uniform codified internet law related to jurisdiction[44], this research will scrutinise if the courts have been able to respond to this challenge posed by cyberspace.

1.2.: Introduction:

"Beyond the familiar online world that most of us inhabit – a world of Google, Hotmail, Facebook and Amazon – lays a vast and often hidden network of sites, communities and cultures where freedom is pushed to its limits, and where people can be anyone, or do anything, they want - Bartlett[45]".

The flexibility and diversity of the internet have facilitated the evolution of a diverse array of approaches, arising from both the public and the private sector, regarding subversive activity. The scope ranges from the private sector contracting for the disclosure of industrial secrets to nation states sponsoring security agencies to spy on and hack other states. Running through this diverse array of information exchange is the

[40] Fangfei, W. F., (2009), 'Obstacles and Solutions to Internet Jurisdiction: A Comparative Analysis of the EU and US laws', Journal Of International Commercial Law And Technology, Vol 3, Issues 4, pp 233-241.

[41] Svantesson, D. J. B., (2016), 'Jurisdiction in 3D – "scope of (remedial) jurisdiction" as a third dimension of jurisdiction', Journal of Private International Law, Vol 12, Issue 1, pp 60-76; many applicable laws are not substantively compatible because every nation has different interests and may want state based legislation to regulate cyberspace conflicts.

[42] Internet & Jurisdiction (2017), '12 Jurisdiction Cases that Marked the Year 2016'; Child pornography, terrorism, suicide materials, spyware and censorship are issues on which laws vary internationally, and yet each website is typically available globally. Freedom of speech has different standards and defamation is remedied subjectively across globe. Nations have different ages at which a person is no longer regarded as a child; freedom of speech issues arise with terrorism issues (plans to make a bomb) and suicide information, but the law must address the easy reach of such material in the digital age, in ways that in other contexts may be considered draconian.

[43] A wider concept of governance may be more suitable to tackle online disputes in cyberspace. This multi layered governance system should be a mixture of national and international legislation, and self-imposed regulation by the ISPs and on-line users.

[44] Chen, C., (2002), 'United States and European Union Approaches to Internet Jurisdiction and their Impact on E-Commerce', University of Pennsylvania Journal of International Economic Law, Vol 25, Issues 1, pp 423-455.

[45] Bartlett, J., (2014), 'The Dark Net: Inside the Digital Underworld', (William Heinemann, London), pp ix

law and the concept of relevant and enforceable jurisdiction. These provisions regulate how the state operates and how the private sector actors behave within the environment of the state. Control over areas of cyberspace is maintained by various provisions, covering a number of legal areas including both civil and criminal law and reaching into many of the separate legal areas that exist[46].

Sovereign states can also territorialise the internet by introducing regulations to deal with an activity that takes place online[47] (i.e. data privacy laws). They can execute 'technology regulations' which can restrict the manufacturer by placing certain obligations[48] (see-1.10). This enables them to exert their sovereign power over the part of cyberspace which exists within their physical borders. These restrictions can be in the form of a hardware filter or software control:

1. Russia[49], North Kora[50] and China[51] control their part of cyberspace by placing various restrictions on the accessibility of certain websites. They have petrified digital borders through aggressive 'Internet filtering and control' which represent a binary opposition to the idea of an open internet and the free flow of information[52].

2. Muslim countries apply their censorship restrictions within their physical borders. For example, Saudi Arabia, Turkey, Egypt and Pakistan Governments banned YouTube channel and demanded the removal of blasphemous material from Facebook (see-5.8.3). It implies that these states are giving their national

[46] Cyberspace has reached into the majority of legal areas: Contract, negligence, intellectual property have all had parts overhauled due to the influence of the internet.
[47] Zimmermann, A., (2014), 'International Law and 'Cyberspace Space', European Society of International Law, Vol 3, Issue 1.
[48] China and Russia use internet filters to control cyber-traffic. France and Germany had implemented fines for companies that allow Nazi content to remain online. In the US the FBI demanded that Apple write software to hack into an iPhone used by one of the San Bernardino killers and took the firm to court when it refused.
[49] Nocetti, J., (2015), 'Contest and conquest: Russia and global internet governance', International Affairs, Vol 91, Issue 1, pp 111-130.
[50] Zeller, T., (2006), 'The Internet Black Hole That Is North Korea"; The New York Times, online https://www.nytimes.com/2006/10/23/technology/23link.html [Assessed 23rd July 2018].
[51] He, X., & Lin, F., (2017), 'The losing media?, An empirical study of defamation litigation in China', China Quarterly, Vol 230, Issue 230, pp 371-398.
[52] Dou, E., (2016), 'Microsoft, Intel, IBM Push Back on China Cybersecurity Rules', The Wall Street Journal online url: http://www.wsj.com/articles/microsoft-intel-ibm-push-back-on-china-cybersecurity-rules-1480587542 [Assessed 7th December 2016].

law's wide extraterritorial effect. Such material may not be defamatory or blasphemous in other countries[53].

3. Compounding this complexity, every country has its laws to regulate cyberspace (see-2.5). It makes the cyberspace a 'wild west[54]' in which the laws of the states are applied in a way that may not be conducive to resolving disputes[55]. There is a possibility that this digital coexistence of diverse national laws in shared cross-border online spaces may divide cyberspace into fragments[56].

This fragmentation is visible when law is implemented by domestic states[57] using 'municipal-laws', based on the territoriality of jurisdiction. Due to the nature of sovereignty and the complexity of the regulation of interstate relationships, there are currently no truly global agreements that deal with the issue of jurisdiction[58]. The myriad situations that arise in cyberspace further increases the complexity of the area[59]. An argument is presented, that cyberspace is only a tool and medium[60]; hence, the focus of 'regulation' must be placed on the individual's conduct. Territorial norms already regulate these individuals[61]; however, domestic laws can only impose national restrictions, which mostly avoid international conventions and agreements[62]. For

[53] It is detailed in later Chapters (see-2.3.1, 5.5)

[54] Hua, W., (2017), 'Cybermobs, civil conspiracy, and tort liability', Fordham Urban Law Journal, Vol 44, Issue 4, pp 1217; the Internet raises complex substantive legal conflicts as to what constitutes a defamatory statement and how reputation is to be measured for Internet transmissions. With hundreds of countries connected to the Internet, it is unclear as to whose community standards apply.

[55] Lambach D., (2016), The Territorialisation of Cyberspace, Conference Paper: Heidelberg, online url: https://www.researchgate.net/publication/308720083_The_Territorialization_of_Cyberspace [Assessed 8th December 2016].

[56] Dou, E., (2016), 'Microsoft, Intel, IBM Push Back on China Cybersecurity Rules', The Wall Street Journal online url: http://www.wsj.com/articles/microsoft-intel-ibm-push-back-on-china-cybersecurity-rules-1480587542 [Assessed 7th December 2016].

[57] Many applicable laws are not substantively compatible because every nation has different interests and may want state based legislation to regulate cyberspace conflicts.

[58] Szigeti, P. D., (2017), 'The illusion of territorial jurisdiction', Texas International Law Journal, Vol 52, Issue 3, pp 369-399.

[59] Johnson, David R., & Post, David G., (1996), 'Law and Borders - The Rise of Law in Cyberspace', Stanford Law Review, Vol 48, pp 1367.

[60] Leong, N., & Morando, J., (2016), 'Communication In Cyberspace', North Carolina Law Review, Vol 94, Issue 1, pp 105-162.

[61] Hourani v Thomson and others [2017] EWHC 432 (QB); Warby J concluded that the conduct of making fake YouTube events to lobby is not protected by the rights to freedom of speech or freedom of assembly at the expense of the claimant's right to privacy and family life.

[62] Svantesson, D., (2015), 'The holy trinity of legal fictions undermining the application of law to the global Internet', International Journal of Law and Information Technology, Vol 23, Issue 3, pp 219-234

instance, jurisdiction laws of England are based on physical presence[63] and proper service[64]. Similarly, other state laws are also based on their jurisprudence, which raises problems that relate to online jurisdiction[65].

'Jurisdiction' is the core of this research because it can play an important role regarding the future directions of internet regulation[66]. Each country has a system of domestic provisions to regulate state-level cyber activities and cyber activities that cross international borders[67]. The cross-border nature of cyberspace has created unprecedented benefits[68] for humanity, enabling the exchange of manifold of data almost instantly. It has become central to the world economy[69] but there are various factors, which threaten its stability (threat of ISIS and Al-Qaeda, piracy, privacy, personality breaches and freedom of expression, etc.). The law has often been unable to keep up with the technological advances in cyberspace[70], for example, defamation law, in particular, lags behind the technological innovation of cyberspace (see-2.14). The tort of defamation is not concerned with the impact of the publisher's statement on the claimant, but the impact of that statement on those who are the part of the claimant's community[71]. Millett LJ[72] decided that calling someone 'hideously ugly' is potentially defamatory; whether it is so or not depend on the individual circumstances. Social media users publish opinions and casual comments, which may not reflect the

[63] Civil Jurisdiction and Judgments Act 1982; it is based on two basic principles of physical presence and actual service of writ.

[64] Ministry of Justice, Civil Procedure Rules, Rules & Practice Directions; Part 6 - Service of documents, practice direction 6b – service out of the jurisdiction.

[65] Rahman, A., (2015), 'Personal Jurisdiction on the Internet: A Global Perspective, Journal of Internet Commerce', Vol 14, Issue 1, pp 114-122.

[66] Jimenez, W., & Lodder, A., (2015), 'Analysing Approaches to Internet Jurisdiction Based on a Model of Harbours and the High Seas', IRLCT, Vol 29, pp 266-268; law can only be applied if the jurisdiction is certain because jurisdiction deals with territory which must be linked to the internet transaction, or to be more precise to the defendant.

[67] Bucaj, E., (2017), 'The Need for Regulation of Cyber Terrorism Phenomena in Line With Principles of International Criminal Law', Acta University Danubius, Vol 13, Issue 1, pp 140-161.

[68] Online business, online banking, easy communication, entertainment.

[69] Ghappour, A., (2017), 'Searching places unknown: Law enforcement jurisdiction on the dark web', Stanford Law Review, Vol 69, Issue 4, pp 1075; Lewis, J. A., (2010), 'Sovereignty and the Role of Government in Cyberspace', Brown Journal of World Affairs, Vol xvi, Issue ii.

[70] Hua, W., (2017), 'Cybermobs, civil conspiracy, and tort liability', Fordham Urban Law Journal, Vol 44, Issue 4, pp 1217; the Internet raises complex substantive legal conflicts as to what constitutes a defamatory statement and how reputation is to be measured for Internet transmissions. With hundreds of countries connected to the Internet, it is unclear as to whose community standards apply.

[71] Hooper, D., Waite, K., & Murphy, O., (2013), 'Defamation Act 2013 – what difference will it really make?' Entertainment Law Review, Vol 24, Issue 6, pp 199–206; *Pring v Penthouse* [1982] 695 F. 2d 438, the court considered two questions (1) whether the publication was about the claimant, and concerning her as a matter of identity; (2) whether the story must reasonably be understood as describing actual facts or events about the claimant or actual conduct of the claimant.

[72] *Berkoff v Burchill* [1996] 4 All ER 1008.

claimant's character or reputation[73]. Yet, these jokes might lead an ordinary reasonable person to shun them. The purpose of defamation laws is to protect an individual's privacy, dignity and reputation (see-5.2).

Social media has accelerated the pace of innovation in communication and the way it affects others. It has made existing principles irrelevant[74] because traditional models of interstate jurisdiction struggle to cope with the digital realities of the twenty-first century[75]. The continuing push towards user-friendly interfaces and continued smartphone evolution alongside a population that continues to use and thus progress technology has resulted in social media evolving at a rapid pace (see-2.1, 5.8.4). For this research, social media relates to any website or application, which allows peer-to-peer communication and content sharing. These networking platforms may be used for a variety of purposes[76] (see Appendix-VII). The most popular social media platforms are Facebook, Twitter, Google+, YouTube, Reddit, Pinterest, Yahoo chat, Wikipedia, Wiki-How and LinkedIn[77]. Anybody registered on these sites can write an article, blog or opinion; leave remarks or tweet; 'like' other's post or share something. By doing so, an online user can immediately be subject to the laws of every country, wherever the information is published, read, downloaded, or shared[78]. This published information will be potentially defamatory if it impugns somebody's reputation[79]. The use of doctrinal research will allow the thesis to critically analyse whether the existing jurisdictional laws are still valid within cyberspace (see-3.12.1).

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[73] An Islamic fundamentalist female might be publicly shamed by being depicted on a web site that shows her unveiled face. A Hindu might be humiliated by being placed unwittingly in a hamburger chain's online advertisement. The exceptions are detailed at 5.4.1.

[74] Chesterman, S., (2015), 'Law plays catch-up with technology' – available online at: http://www.straitstimes.com/opinion/law-plays-catch-up-with-technology [Assessed 21 February 2018]; there exists a danger that, in near future, the dominant public/private actors rather than individual states will set de facto rules. As evident from Facebook and Google data storage policies (see-2.3.2).

[75] Holland, H. B., (2005), 'The Failure of the Rule of Law in Cyberspace? : Reorienting the Normative Debate on Borders and Territorial Sovereignty', J. Marshall J. Computer & Info. L., Vol 24, Issue 1.

[76] Stewart, D. R., (2013), 'When retweets attack: Are twitter users liable for republishing the defamatory tweets of others?', Journalism & Mass Communication Quarterly, Vol 90, Issue 2, pp 233-247.

[77] Arkowitz, J., Pearson, L., Benjamin, B., (2013), 'A Brand Owner's Guide to Social Media', Kilpatrick Townsend & Stockton LLP, Available online: http://kilpatricktownsend.com/~/media/Files/Publications/May%202013%20Brand%20Owners%20Guide.ashx [Assessed 31st January 2017].

[78] George, S., (2017), 'Social Media Policy', NWU, File reference 6P/6.2.10; Andreas, M., & Haenlein, M., (2010), 'Users of the World, Unite! The Challenges and Opportunities of Social Media', Business Horizons, Vol 53, pp 62-64.

[79] Lunney, M., & Oliphant, K., (2013), Tort Law: Text and Materials (5th Edition, Oxford University Press, UK), pp 581 (see-Ch.5).

1.3.: The aim of the Research:

'No conflict exists…"Where a person subject to regulation by two states can comply with the laws of both" - Justice Souter[80].

Cyberspace challenges the traditional legal framework because it is borderless, whereas jurisdictional laws are limited to geographical boundaries[81]. There is a need to identify "how to preserve the global nature of cyberspace while respecting domestic laws[82]". This thesis aims to analyse two areas:

1. **Traditional laws:** This thesis will critically interrogate the application of classical rules in modern digital communication. Private international law rules assist courts in deciding online conflicts involving foreign elements. It encompasses choice of law (national or foreign law), the court's jurisdiction (which court is competent to determine the case) and the recognition and enforcement of foreign judgments[83].

2. **Cyberspace:** The relationship between national courts and the internet has been the subject of wide-ranging discussions. It caused authorities (parliament as well as courts) to create cyber laws in response to various situations and disputes[84]; this took place for the most part on an ad hoc basis[85]. In the absence of a clear

[80] Dodge, W. S., (1998), 'Extraterritoriality and Conflict-of-Laws Theory: An Argument for Judicial Unilateralism' Harvard International Law Journal, Vol 39, Issue 101, pp 136.

[81] Marton, E., (2017), 'Violations of personality rights through the Internet: jurisdictional issues under European law (Nomos 2016), Ch. 2, pp 55-70.

[82] A body of 'cyber law' is non-existent; it is dangerous to pretend that it exists. A lust to define the law of the future is even worse, since law tends to evolve through an inductive accretion of experience. It is much safer to extract first principles from a mature body of law than to extract a dynamic body of law from timeless first principles. An overly technological focus can create bad taxonomy and bad legal analysis; Sommer, J., (2000), 'Against cyber law', Berkeley Tech L J, Vol 15, pp 1145.

[83] The process of seeking the recognition and enforcement of foreign judgments can be technical, time-consuming and expensive; however, there may be following further hurdles: (1) Objections based on the public policy, (2) Lack of jurisdiction of the foreign court, (3) Procedural defect in the judgment or award, (4) Damages may not be recognised in the enforcement state, (5) Judgment is not conclusive, etc.

[84] The problems of internet jurisdiction are always evolving - each new law creates loopholes, which in turn fuels the technology designed to take advantage of these loopholes. Not all cases of internet jurisdiction are black and white i.e. it is impossible to create a blanket law that applies to all cases Jurisdictional issues within cyberspace are an ongoing fight with no clear winners or losers.

[85] Lautman, R., & Curran, K., (2011), 'The Problems of Jurisdiction on the Internet', International Journal of Ambient Computing and Intelligence, Vol 3, Issue3, pp 36-42; cyber law forms a unique area of legal discourse. Any lesson about cyberspace requires an understanding of the role of law, and that in creating a presence in cyberspace, we must all make choices about whether the values we embed there will be the same values we espouse in our real space experience. Understanding how the law applies in cyberspace in conjunction with demands, social norms and mores, and the rule of cyberspace, will be valuable in understanding and assessing the role of law everywhere.

cyber law approach, judges decided the cases on an individual basis[86]; similarly, statutes were passed without a coherent plan in place[87] - Computer Misuse Act 1990[88] and Cyber Terrorism Act 2006 are clear examples. To date, many cyberspace-based issues are resolved by the application of traditional principles[89]. For instance, commercial, contract and consumer laws still apply to cyberspace transactions as they are applied to non-digital transactions[90]. However, cyberspace creates unusual circumstances which in certain situations cannot be resolved by applying traditional regulations[91] (see-2.10). Defamation provides an example, as a defamatory tweet can be re-tweeted; therefore, the traditional 'multiple publication' rule cannot be applied to social media defamation[92].

[86] Roth, A. L., (2016), 'Upping the ante: Rethinking anti-SLAPP laws in the age of the internet', Brigham Young University Law Review, Vol 6, Issue 2, pp 741.
[87] Lessig, L., (1999), 'The law of the horse: What cyber law might teach', Harvard L Rev, Vol 117, pp 501; Johnson, David R. & Post, David G., (1996), 'Law and Borders - The Rise of Law in Cyberspace', Stanford Law Review, Vol. 48, pp 1367.
[88] It does not define misuse of computer: Unauthorised access; *R v Bedworth* [1991] – intent; *R v Cropp* – when an offence takes place; *DPP v Bignell* [1998] - unauthorised access of personal information.
[89] Boyle, J., (1977), 'Foucault in cyberspace: Surveillance, sovereignty, and hard-wired censors', University of Cincinnati Law Review, Vol 66, pp 177.
[90] Wang, F. F., (2008), 'Obstacles and solutions to internet jurisdiction: A comparative analysis of the EU and US Laws', Journal of International Commercial Law & Technology, Vol 3, Issue 4, pp 233-241
[91] Sommer, J. H., (2000), 'Against cyber law', 15 Berkeley Technology Law Journal, Vol 15, Issue 3, pp 1145.
[92] Sapna, K., (2003), 'Website Libel and the Single Publication Rule', University of Chicago Law Review, Vol 70, Issue 2, Article 5, pp 638-263.

1.3.1: Contribution to knowledge:

The core vision of this research is to probe whether national rules on jurisdiction, which have been developed since the Victorian period, are still applicable to the ever-evolving, cross-border nature of cyberspace (see-9.2.3). Connecting factor, which provides the basis to assume jurisdiction, is the most critical legal issue (see-4.6). This research will evaluate whether conventional connecting factors (domicile, nationality or the place of publication) are still applicable to social media communication. Alternatively, there is a need to establish a new basis to assume jurisdiction in cyberspace.

This thesis will contribute to the existing knowledge by attempting to test traditional rule's validity concerning social media libel. As a whole, this thesis will become a research guide for the victims of social media libel to obtain initial information before pursuing legal action against a foreign-based defendant (see-9.3).

However, this thesis does not recommend changing the jurisdiction laws, but the practical methods which are used to apply traditional laws; for example, an alteration of 'service of writ' and 'physical presence process' (see-6.2.3, 6.6.2). The change of medium does not necessarily mean that a new regulatory framework has to be created to resolve social media libel disputes[93]. In the Ainsworth[94] case, the court held that traditional laws could be applied to resolve cyberspace conflicts. This thesis will explore what is unique[95] about social media, which can warrant the abandonment of traditional choice of law rules[96]. Hence, rather than changing the private international law framework, this thesis may recommend modernising the conventional methods of assuming jurisdiction in cyberspace. In this way, traditional rules can still be applied effectively for social media defamation claims. This revamp will ensure that online jurisdictional rules are equivalent and as predictable as those in off-line matters.

1.4.: The objective of this research:

[93] Zekos, I., (2002), 'Legal problems in cyberspace', Journal of Managerial Law, Vol 44, Issue 5, pp 45-102
[94] *Lucasfilm v Ainsworth* [2009] EWCA Civ 1328 [193]–[94].
[95] It is independent from physical elements and geographical places; Svantesson, D., (2013), 'Private International Law and the Internet', (2nd Ed, Kluwer, OUP), pp 52–62.
[96] Schulz, T., (2008), 'Carving up the Internet: Jurisdiction, Legal Orders, and the Private/Public International Law Interface', EU Journal of International Law, Vol 19, Issue 4, pp 802-803.

"If there exist conflicting laws, it will hamper the universal trade and cooperation with private individuals[97]".

Previous researchers[98] have discussed the issue of private international law rules and their problematic application to cyberspace. It is argued that the traditional framework is obsolete[99] and not fit for the ever-growing nature of cyberspace (see-7.8, 7.9). Traditional jurisdictional laws have been developed for 'offline activities' in the physical world. The transitional nature of the internet means that online disputes can involve foreign elements from more than one country[100]. The conflict of law rules are applied in internet-based civil disputes as if they apply to similar offline disputes. This will allow the thesis to offer some suggestions to improve existing rules which can then be equally applied to online and offline disputes.

The objectives of this research can be accomplished via the following means, using the black letter methodology:

1. Microscopic analysis of how the cause of action provided by online defamation can be interpreted for social media (see-7.1.1)

2. A systematic analysis of private international law rules, jurisdiction and choice of law rules; how they are applied or are likely to apply, to material published via social media (see-7.1.1)

1.5.: The importance of this research:

"People like to express themselves, and are curious about other people…[101]".

The importance of this research lies in the question: Will it be practical to adapt traditional jurisdiction rules which have slowly developed for centuries to cyberspace.

[97] Faria, J. A. E., (2009), 'Future Directions of Legal Harmonisation & Law Reform : Stormy Seas or Prosperous Voyage?', Uniform Law Review, Vol 14, Issue 1, pp 5-34.
[98] Mugarura, N., (2017), 'The interaction of public and private international law in regulation of markets', International Journal of Law and Management, Vol 59, Issue 6, pp 1236-1256.
[99] Darrel, C. M., (1998), 'Jurisdiction in Cyberspace: A Theory of International Spaces', Michigan Telecommunications and Technology Law Review, Vol 4, Issue 1, pp 69-105.
[100] The author is not concluding that all the cyber-transactions traverse sovereign borders; however, a significant proportion of all internet communications are trans-border in character.
[101] Cassidy, J., (2006), 'Me Media: How Hanging Out on the Internet Became Big Business', New Yorker, available online http://www.newyorker.com/archive/2006/05/15/060515fa_fact_cassidy [Accessed 14th January 2018).

These rules are already practised for non-internet disputes involving foreign elements. If jurisdictional rules are changed to accommodate the challenges of cyberspace, then England will have two sets of private international law rules, one for offline and one for online transactions.

English private international law rules have great importance in the international community[102] as they are:

1. A reference point on jurisdictional issues
2. A guide to be considered in the subsequent choice of law issues
3. Incorporated into many countries (Australia, India, Pakistan and Canada) private international law rules[103]

Arguably, Commonwealth and Common law countries are still using traditional rules to assume jurisdiction in cyberspace. There is no need to create another domestic body of jurisdictional rules to accommodate cyberspace. England cannot afford to have two tiers of private international law to accommodate geographically dependent local values, public policies and online commercial efficiency and cyberspace dispute resolution[104].

The reasons are as follows:

1. Private international law is not solely concerned with the practice of courts and tribunals because it is not exclusively private in its nature and function[105]. It also plays a global regulatory role when applied to cyberspace disputes[106]. There is a need to change the regulatory approach when traditional rules are applied to

[102] Carballo, L., & Kramer, X., (2014), 'The Role of Private International Law in Contemporary Society: Global Governance as a Challenge', Erasmus Law Review, Issue 3, pp 109-112; Carter, P., (1993), 'The Role of Public Policy in English Private International Law', The International and Comparative Law Quarterly, Vol 42, Issue 1, pp 1-10; Cheshire, C., (1935), 'Private International Law', (The Clarendon Press, Oxford), pp ix.

[103] Law, C., (2016), 'Legal Systems of the World', Civil Law Newsletter, Issue 4, pp 3; in the early 20th century, the British Empire extended all the way from Australia, New Zealand, the far-east countries and the Indian subcontinent to large parts of Africa and Canada and Commonwealth nations. As a result, the legal systems of many of these countries have been derived from or maintain a strong link to English common law principles.

[104] Schultz, T., (2008), 'Carving up the Internet: Jurisdiction, Legal Orders, and the Private/Public International Law Interface', The European Journal of International Law, Vol 19, Issue 4, pp 799-839.

[105] Graveson, R. R., (1951), 'Choice of Law and Choice of Jurisdiction in the English Conflict of Laws', British Year Book of International Law, Vol 28, pp 273-290.

[106] Kennedy, D., (1996), 'International law and the nineteenth century: History of an illusion', Nordic Journal of International Law, Vol 65, Issue 3, pp 385-420.

cyberspace because the internet has changed behaviours and methods of interaction. Therefore, after fine-tuning of jurisdiction, service of court documents, and establishing a physical presence, traditional rules can still be applied to internet transactions.

2. Traditional jurisdictional rules were developed long before the advent of the internet. Irrespective of the internet, these rules are also applied to 'offline' cross-border disputes (see-6.6.3). It can be argued that if these rules can be applied offline, they can also be applied to online transactions. However, in online transactions, there can be more than one foreign element involved, which may trigger more than one competent jurisdiction. If a court establishes personal jurisdiction, it becomes the appropriate jurisdiction to decide the case[107]. Although, it does not prove that the other parallel jurisdiction becomes inappropriate to decide the case[108]. This issue can be resolved via 'convenient forum test'. It decides the appropriate forum by giving due regard to the litigant's choices, availability of evidence, witnesses suitability and needs of justice (see-2.17.1, 4.7, 6.9.1.2).

3. Traditional rules still apply to cyberspace disputes, but there can be some practical difficulties in the application of jurisdictional rules[109]. For instance, a Chinese author will be a defendant if he publishes a defamatory statement in a newspaper. He can be served with a claim form because he is physically present in China. Whereas, a similar statement published via social media would be difficult to trace because it can be re-published. Who would be a defendant in social media defamation (see-7.18): The first person who uploaded a defamatory statement, the users who republished it or the user who merely shared/forwarded it? It is possible that the writer, uploader/publisher and internet users are

[107] *Piper Aircraft v Reyno* [1981] 454 U.S. 235.
[108] *Voth v Manildra Flour Mills Pty Ltd* [1990] 97 CLR 124.
[109] It may be argued that conflict of laws principles in cyberspace have been inadequately served by traditional principles established over centuries. It allowed the judges to form new approaches. For instance, social media libel is unlike the static occurrences. A defamation statement can be published continuously worldwide 24 hours a day. The courts have had to reconsider the single publication rule, and the applicability of local laws to a website intended for another jurisdiction, but with global reach.

different people. In this scenario, the user who shared the statement cannot be blamed if he believed it was not defamatory material[110] (see-5.5.2.2).

Interactive social networking makes it difficult to predict whether traditional rules will able to cope with the cross-border nature of cyberspace disputes. Schulz[111] also highlighted that the peculiarities of social media communication are not easily accommodated by rules, which rely on geographical 'connecting factors'. This dilemma may lead to the risk of an inappropriate law being applied or loss of time spent litigating (see-7.3).

1.5.1: An alternative to traditional laws:

Alternatively, another set of private international law rules could be introduced to resolve online cross-border disputes. However, the application of two parallel sets of rules may not work unless jurisdiction is harmonised globally. In the contemporary political environment, it may be impossible to harmonise cyber-laws. There have been many efforts to align these laws previously but without success. For instance, the Hague Conference on private international law took much time to negotiate and draft a convention intended to create standard jurisdictional rules. It was regarded as the most important legal event in the history of cyberspace[112]; however, to date, there are still numerous complications regarding its application. Intergovernmental organisations[113] made similar efforts, including, the World Trade Organisation and the World Intellectual Property Organisation. These instruments[114] have been difficult to create but

[110] There appears to be no single solution to the regulation of defamatory and harmful content on the Internet because the exact definition of defamatory publications and what is considered harmful varies from one country to another. What is defamatory in China may be highly protected speech in the UK.

[111] Schulz, T., (2008), 'Carving up the Internet: Jurisdiction, Legal Orders, and the Private/Public International Law Interface', EU Journal of International Law, Vol 19, Issue 4, pp 802-803

[112] Tanada Y.J., (2001), Global Treaty Tames the Web, Business World; Available online at: www.steptoe.com/assets/attachments/716.doc [Assessed 16th March 2017].

[113] Many international organisations have spent considerable time and resources on resolving legal issues and difficulties in cyberspace activities: (The United Nations Commission on International Trade Law (UNCITRAL), the International Chamber of Commerce (ICC), the Asia-Pacific Economic Cooperation (APEC), the Organisation for Economic Cooperation and Development (OECD), the World Trade Organization (WTO), Free Trade Agreement of the Americas, the International Telecommunications Union and the International Organisation for Standardisation); to date there is no disparate and coherent body of law applicable to cyberspace.

[114] International Electrotechnical Commission, Electronic Signature, International Organization of Legal Metrology, United Nations Economic Commission for Europe, Unification of Private International Law, Intellectual Property Rights, etc.

unworkable once created; therefore, the harmonisation of a single instrument may not be possible[115].

1.5.2.: Uniform code:

Cyberspace is global, so its legal framework must be consistent across countries (see-2.5). The above analysis shows that a single uniform code in cyberspace may not be the solution to resolve the wide range of legal disputes. Even various independent-organisations[116] tried to unify the fragmented part of cyberspace regulation by introducing mandates and providing consistent solutions to internet disputes. These efforts to create uniform international laws have been conducted in a range of fields in both public and private spheres. However, despite these efforts, there exists an ever-increasing problem in digital-signature, e-commerce, copyright, online-trade, and internet-contracts. Even the Hague Conference on private international law[117] failure, despite various attempts, to resolve this issue indicates that a state-level coalition is needed to resolve the issue of jurisdiction in cyberspace[118]. With increased globalised online trade, there are numerous issues relating to parallel proceedings and concurrent jurisdiction[119].

The above analysis shows that these organisations have been unable to negotiate a unifying code that applies to cyberspace. To date, the issues of jurisdiction, choice of law and the application and enforcement of law by foreign judges are still the main areas of concern in cyberspace. Additionally, the resolution of social media defamation claim demands an appropriate framework covering technical, commercial, and legal aspects. It seems that the above-mentioned international conventions cannot facilitate social media libel transaction satisfactorily. This thesis will not duplicate their work but determine what has not been discussed previously. For example, social media libel did not exist when the conventions were introduced.

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[115] Davidson, A., (2012), 'The Law of Electronic Commerce', (2nd Ed, Cambridge University), pp 11.
[116] Davidson, A., (2012), 'The Law of Electronic Commerce', (2nd Ed, Cambridge University), pp 23.
[117] The Hague Conference on Private International Law (1893) - is the oldest international organisation of nearly 130 member states. It is the world's leading intergovernmental organisation in the field of private international law. Its mission has been to work towards a world in which individuals and companies can enjoy a high degree of legal security when crossing borders between countries.
[118] Teitz, L.E., (2004), 'Both Sides of the Coin: A Decade of Parallel Proceedings and Enforcement of Foreign Judgments in Transnational Litigation, Roger Williams UL Rev, Vol 10, Issue 1.
[119] Bookman, P.K., (2015), 'Litigation isolationism, Stanford Law Review, Vol 67, Issue 1, pp 1081 – 1144.

1.6.: The scope of this research:

"The Internet is becoming the town square for the global village of tomorrow."

Bill Gates - 1999[121]

The scope of private international law varies from state to state because each jurisdiction has distinct rules[122]. It can produce complexity even in offline conflicts. Compounding these controversies is the fact that the internet does not recognise sovereign states or physical boundaries[123]. The biggest challenge cyberspace creates for private international law is the application of material-world rules to a non-material interface (see-2.6). These rules were formulated for a world with geographical boundaries, which are further divided into sub-territories, each with a significant domain based on jurisdiction. Within the US, there are 50 states, each with further levels of court hierarchy. Similarly, Canada, India and Australia are also sub-divided into separate jurisdictions. The UK comprises of Scotland, Northern Ireland, 'England and Wales', each having a degree of separate legal jurisdiction (the Defamation Act 2013 is not adopted by Scotland and Northern Ireland).

There is scope for future research to include other jurisdictions. Considering the ubiquitous nature of cyberspace and cross-border nature of social media defamation, it is very difficult to ignore developments in private international law across the world. The sources of private international law for this thesis include English legislation, the decisions of national courts, treaties and international uniform laws on jurisdiction (see-4.2.1). The regional instruments such as EU legislation and the writings of jurists from the US, EU[124], Australia, and other Commonwealth countries will also be incorporated

[121] David, L. G., (2008), 'I-Quote: Brilliance and Banter from the Internet Age', (Lyons Press, UK), pp 6.

[122] Rukundo, S., (2018), ''My President is a Pair of Buttocks': The limits of online freedom of expression in Uganda', International Journal of Law and Information Technology, eay009, Issue 0, pp 1–20; calling president on Facebook as a pair of buttocks was treated as harassment in Uganda but it clearly falls under defamation.

[123] Ali G. R., (2016), 'A proposed solution to the problem of libel tourism, Journal of Private International Law, Vol 12, Issue 1, pp 106-131.

[124] The European Union tried to harmonise the jurisdictional approach across Europe by adopting standard regulation; Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

to form the views presented in this thesis. However, the primary scope of this research is to consider the governing laws of England and apply them to social media defamation cases.

1.6.1.: The law of England and Wales:

In the wake of the modern division of wrongs, the law of England and Wales recognises[125]:

Common law civil wrongs - tort, breach of contract

1. Equitable wrongs - breach of fiduciary duty, breach of trust, breach of confidence, dishonestly procuring and estoppel
2. Statutory wrongs - contravention of primary or delegated legislation

The equitable and statutory wrongs are beyond the subject matter of this research. This research will focus on civil wrongs which do not involve any form of consent from social media users and ignore the breach of contract, trust or fiduciary duty.

1.7.: Summary:

This study represents a topical area of law and an area that needs reform if it is proven that existing laws are invalidated or attenuated by the advent of cyberspace. It also highlights that only a slim prospect of success for a universal code of cyberspace exists unless national laws are harmonised. This thesis recommends introducing a legal system of legal systems just like the internet is working fine as a network of networks. It would allow traditional domestic laws to operate in harmony without any clashes of jurisdiction. This remodelled legal framework could provide the legal certainty, application consistency and outcome predictability, which is required for cyberspace to prosper[126]. This may also be subsequently applied to social media as well. In short, this

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[125] Descheemaeker, E., (2010), 'The Division of Wrongs: A Historical Comparative Study', (2nd Ed, Oxford Uni Press), Part III – Modern English Law, pp 208; Bigos, O., (2005), 'Jurisdiction over Cross-Border Wrongs on the Internet', ICLQ, Vol 54, pp 585-602; law of tort is biggest form of torts and this research only focus on one of the area of tort law: Defamation, which excludes statutory duty and consent.

[126] Svantesson, D., (2015), 'The holy trinity of legal fictions undermining the application of law to the global Internet', International Journal of Law and Information Technology, Vol 23, Issue 3, pp 219-234.

research can contribute to the existing literature by making recommendations which are designed to (see-8.5):

Address a gap in legal literature

a. Produce a statement of law about jurisdictional rules
b. Offer suggestions and required amendments
c. Test the validity of traditional laws in cyberspace
d. Offer a road-map for libel victims

Chapter 1

PART B

STRUCTURE OF THIS THESIS

This thesis adopts the standard academic structure of British PhD research assignments (see Appendix-II). It contains background, literature review, analysis, findings and conclusion.

1.8.: Literature review:

The review of existing literature is a guide and pointer to others' works to justify a framework in the same field[127]. For doctrinal research, no further justification is needed other than the task of identifying what the law is and the inconsistencies it contains[128]. Unlike social science, a legal thesis does not commence with a general literature comparison[129]; however, wider literature appears in the footnotes[130]. This thesis conducted a thorough review of the relevant provisions in Chapter 2, which moves from broader concepts (cyberspace and defamation) to a more specific focus (social media and libel).

1.8.1.: The availability of literature:

Relevant literature is extensively available in commentaries about the impact of the internet, the nature of digital communication and cultural and behavioural changes after the development of cyberspace[131]. Existing literature elaborates that the internet has become an arena for deviant behaviour (see-2.1, 2.5, 5.6, 8.1.3.). The relevant literature required for this thesis is based on two statutory rights 'freedom of expression' and 'protection of reputation':

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[127] Fink, A., (2010), 'Conducting Research Literature Reviews: From the Internet to Paper' (1st Ed, Sage Publication, London), pp 3; Dimakopoulou, S., Dokou, C., & Metse, E., (2013), 'The letter of the law: Literature, justice and the other, (Frankfurt, Peter Lang GmbH, Internationaler Verlag der Wissenschaften), Part 1: The Others before Law, pp 13-90.

[128] Dixon, M., (2015), 'A Doctrinal Approach to Property Law Scholarship: Who Cares and Why?', Kings and Bishops in Medieval England, 1066-1216, Chapter 1.

[129] Dixon, M., (2016), 'A Doctrinal Approach to Property Law: Who Cares and Why?' in Bright, S., & Blandy, S., (eds.) 'Researching Property Law', (1st Ed, Palgrave Macmillan, UK), Chapter 1.

[130] The footnotes appreciate the work of academics who have taken a different view of the law or approached the topic with a different methodology, or who have already commented on the material.

[131] Bell, D., & Kennedy, B. M., (2000), 'The Cyber cultures Reader', (London, UK); Castells, M., (1996), 'The Rise of the Network Society', (Oxford University Press, UK).

1. Unpredictable behaviour is becoming the norm on social media because users find it easy to insult, ridicule, or even harass other users[132]. Previously, people used to refute speech with speech, but since the development of social media diverse culture, the trend has changed to refute statements with claims. There has been an overall 22 % decrease (from 2009 till 2013) in defamation cases[133]. On the contrary, social media libel claims have increased in that period[134] (see Appendix-I). It is the evidence of this cultural shift[135] due to social networking sites[136]. However, there has been no modification of English law concerning social media communication since the Defamation Act 2013.

2. 'Freedom of speech' protects the publishers[137] but if they damage others' reputations, they can be sued for libel, personal rights, breach of privacy or harassment[138]. A claim of defamation can be used in connection with harassment, malicious falsehood and negligence[139] so a social media user cannot assume that his online communication is immune from legal action. Research has shown that the internet as a communications medium helps to spread illegal activities faster[140] and facilitates the recruitment of potential criminals[141] (see-

[132] Li, D., Li, X., Zhou, Z., & Zhou, Y., (2016), 'Perceived school climate and adolescent Internet addiction: The mediating role of deviant peer affiliation and the moderating role of effortful control', Computers in Human Behaviour, Vol 60, pp 54-61.

[133] According to Thomson and Reuters research (https://www.thomsonreuters.com/en.html; Assessed 20th June 2019), high defamation case costs deterring people to go to court or making them less willing to fight defamation court cases all the way to a verdict. Out of court settlement is a cheaper option for defendants in England which is around 140 times more costly than the average; https://www.theguardian.com/media/2008/oct/09/medialaw.pressandpublishing [Assessed 20th June 2019].

[134] Allen-Back, I., (2018), 'Defamation claims on the rise in London', available online at out-law.com; the growing use of social media is a factor behind the 39% rise in the number of defamation claims brought before the courts in London.

[135] In social media, abnormal behaviour is the status quo, tempers can flare in the heat of debate and word wars can last for days or even weeks. It's not uncommon for users to ridicule, harass or insult those who disagree with them.

[136] Gimenes, G., Cordeiro, R. L. F., & Rodrigues-Jr, J. F., (2017), 'ORFEL: Efficient detection of defamation or illegitimate promotion in online recommendation', Information Sciences, Vol 379, pp 274-287; Perry, S. J., & Marcum, T. M., (2016), 'Unmasking the anonymous online speaker: Balancing free speech and defamation', Labor Law Journal, Vol 67, Issue 4, pp 529.

[137] Art 10 & Art 7 of ECHR 1950; Art 7 Universal Declaration of Human rights 1948; Art 26 International Covenant on Civil and Political rights 1966; Art 5 Convention of Elimination of All Forms of Racial Discrimination 1969, Human Rights Act 1998 & Equality Act 2010.

[138] Marwick, A., & Miller, R., (2014), 'Online harassment, defamation, and hateful speech: A primer of the legal landscape', Fordham Centre on Law and Information Policy Report No 2.

[139] *Peter Cruddas v (1) Jonathan Calvert (2) Heidi Blake (3) Times Newspapers Ltd* [2015] EWCA Civ 171.

[140] Lucchi, N., (2014), 'Internet content governance and human rights', Vanderbilt Journal of Entertainment and Technology Law, Vol 16, Issue 4, pp 809.

2.1). However, there are still questions about the extent to which online behaviour facilitates defamation, breaches privacy, or undermines freedom of speech[142].

Common law[143] doctrine of defamation precedent has been generated since the 17th century[144]. The emergence of the internet meant that there was a need for new guidelines; however, this has not happened yet[145]. There is also an issue of libel tourism and undue favouritism to claimants and curtailment of the concept of freedom of speech. This thesis will evaluate the myth of English libel laws being exploited by the rich/public-figures to censor things they disapprove of[146] (see-7.21).

1.9.: Methodology: Library-based research study:

This is a library-based research thesis. The chosen methodology is 'doctrinal research'. The philosophical and theoretical underpinning of using this methodology is explained in Chapter 3. This thesis will use the term 'method and methodology' interchangeably because it does not require an interview or survey to collect data[147]. The required data come from statutes, case law and journal articles (see-3.5.1).

1.9.1.: Limitations:

In any methodology, there are pitfalls to consider regarding the quality of information used. This thesis research design is based on case laws so the following issues may arise:

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[141] Mann, D., & Sutton, M., (1998), 'Net crime: More Change in the Organization of Thieving', British Journal of Criminology, Vol 38, Issue 1, pp 201-229.
[142] Cohen, J. D., (2016), 'The next generation of government CVE strategies at home: Expanding opportunities for intervention, the American Academy of Political and Social Science, Vol 668, Issue 1, pp 118-128.
[143] It originated during the reign of King Henry II (1154-89), when many local customary laws were replaced by new national ones, which applied to all and were thus 'common to all'; https://uk.practicallaw.thomsonreuters.com [Assessed 11th May 2018].
[144] Wilson, T., (2015), Twitter and Facebook users need grasp of defamation law, online published at www.mancunianmatters.co.uk [assessed 14th February 2017].
[145] The only latest instrument is the Defamation Act 2013, however, it has many flaws (see 2.14.1).
[146] Goldberg, D., (2011), 'To Dream the Impossible Dream-Towards a Simple, Cheap, (and Expression-Friendly) British Libel Law', Journal of International Media & Entertainment Law, Vol 4, Issue 1, pp 31-56.
[147] Greenberg, M., (2017), 'What makes a method of legal interpretation correct?: legal standards vs fundamental determinants', Harvard Law Review, Vol 130, Issue 4, pp 105-105.

1. When analysing the documented-data, one must always look for a balance in the writer's work or at least 'record' a biased work. It is often seen in the case notes that the British barristers have a strict approach concerning UK sovereignty[148] when it comes to the application of private international laws. It may be the reason London is famous for forum shopping because judges always find a way to assume jurisdiction[149]. The above is always a problem when one cannot ask direct questions of those who either make the law or who work within (or without) it. In effect, one has to rely on the word of others. To overcome this problem, it is necessary only to take information from high-quality journals written by those with vast experience in the field of jurisdiction (see-4.2.1).

2. It is also necessary to consider the existing legislation to find out what the law says and then compare it to decisions given in court to see how much leeway judges are providing within their judgments. This can also be applied to similar cases with similar facts that offer differing outcomes. To overcome this problem, only the cases of the Court of Appeal or Supreme Court are analysed because they provide binding decisions upon lower courts (see-7.1.2).

3. The internet is borderless whereas the central principle currently used in jurisdiction is 'territoriality-based'. A sovereign state has the right to operate any laws and rules as it wishes within its territorial borders (see-2.3.2). Therefore, over the centuries, rules that have developed in one country are often very different from those in neighbouring countries. This thesis can only effectively dissect English jurisdictional laws so the findings cannot be generalised.

4. It will not consider the areas of 'enforcement of foreign judgments' and 'quantification of libel damages'. The validity of jurisdictional defamation laws cannot be attained without the analysis of enforcement of judgments and damages. These are extensive areas, which can only be conducted at a project level.

[148] S. E. I., (2003), 'Conflicts Between Community and National Laws: An Analysis of the British Approach', Sussex European Institute, SEI Working Paper No 66; for example, the professors who support strict laws in this matter will often try to slant the article in that way.

[149] Blanco, E. M., & Pontin, B., (2017), 'Litigating extraterritorial nuisances under english common law and UK statute', Transnational Environmental Law, Vol 6, Issue 2, pp 285-308.

5. It will ignore the criminal aspect of social media communication (harassment or cyberbullying), so the findings cannot offer the alternative legal options available for victims if they are unable to initiate libel proceedings.

6. The jurisdictions of Scotland and Northern Ireland are not considered, so the relevant suggestions offered to amend the Defamation Act 2013 will only be implemented in England and Wales.

1.9.2.: Gap in the existing literature:

This research is not building a strategy to resolve the current cyber-security issues, but it will test the validity of private international law rules. This thesis will also suggest modifying any of the jurisdictional laws, which are outdated concerning issues presented by a constantly evolving internet sphere. There is a need to concentrate more on the law to synchronise the concept of jurisdiction via private international legal systems rather than from the sociological point of view. There is a definite gap in knowledge:

1. Various writers have considered the question of jurisdiction either with a comparison of the EU laws or without involving cyber-laws. *Regarding black-letter, the argument of social media jurisdiction still needs to be taken further*.

2. *Academics have widely covered cyberspace policies, lawmaking and its governance related issue but there are few doctrinal studies on cyberspace jurisdiction*[150]. Research has been conducted which criticised the lack of cyber-laws and the issues surrounding defamation on the web, especially online libel. However, there is a lack of argument concerning jurisdictional issues in social media libel utilising doctrinal research[151].

[150] Kahin, B., & Nesson, C., (1998), 'Borders in Cyberspace' (1st Ed, Routledge Publication, Cambridge), pp ix.

[151] Hein, J., & Bizer, A., (2018), 'Social Media and the Protection of Privacy: Current Gaps and Future Directions in European Private International Law', International Journal of Data Science and Analytics, pp 1-7; Mills, A., (2015), 'The law applicable to cross-border defamation on social media: whose law governs free speech in Facebookistan?', J. Media Law, Vol 7, pp 1–35; Davidson, S., (2008), 'International considerations in libel jurisdiction, In Forum on Public Policy', A Journal of the Oxford Round Table, pp 1-28.

1.10.: Outline of the thesis:

"The internet is the first thing that humanity has built that humanity doesn't understand the largest experiment in anarchy that we ever had"- Eric Schmidt (Google Chief)[152].

This thesis has been divided into three sections. Please see Table-1:

Table-1: Outline of thesis

#	OBJECTIVES	CHAPTERS
SECTION 1	Background, method and review of cyberspace literature	Ch.1, Ch.2, C.h.3
SECTION 2	Choice of law, Jurisdictional rules, social media and libel	Ch.4, Ch.5, C.h.6
SECTION 3	Discussion, analysis, findings and solution	Ch.7, Ch.8, C.h.9

1. Section-1:

Cyberspace was created as an ungoverned space[153], but it cannot be established that it is ungovernable; especially after the concept of 'internet-neutrality[154]'. It empowers the governments to bind ISPs to treat every digital transaction equally (see-2.6.2). It forbids them to discriminate by content, website, platform, application, type of attached equipment, or method of communication[155]. In short, this concept controls ISPs because they are unable to block or slow down online content.

[152] Taylor, J., (2010), My Fears for Facebook Generation; http://www.independent.co.uk/life-style/gadgets-and-tech/news/google-chief-my-fears-for-generation-facebook-2055390.html [Assessed 2nd May 2018].
[153] Barlow, J. Perry, (1996) A Declaration of the Independence of Cyberspace; https://projects.eff.org/~barlow/Declaration-Final.html [Assessed 7th May 2018].
[154] Net neutrality relates to the openness of the internet and how internet service providers (ISPs) control customer information.
[155] Cheruvalath, R., (2018), 'Internet neutrality: A battle between law and ethics', International Journal for the Semiotics of Law, Vol 31, Issue 1, pp 145-153.

Every country is playing an essential role in its governance[156]. This section will analyse cyberspace functions, background and characteristics, which in turn will set the scope of the research. There will be a summary of the development, nature, regulation, governance and the ownership of cyberspace. This structural analysis of cyberspace provides a vehicle for social media conduct ('libel' refers to social media conduct in this thesis). Without understanding the core operations of cyberspace, it will not be possible to impose a legal duty on its users because it is impossible to isolate the regulations regarding internet conducts from cyberspace. Therefore, it is imperative to understand background information about cyberspace before discussing the legal issues raised by social media[157].

1. Does cyberspace constitute a new object[158]?
2. Is it just a communication medium[159]?
3. Is it ethical to regulate cyberspace?
4. How and why social media raise jurisdictional issues?

2. **Section-2:**

In this section, principles of the 'conflict of law' will be analysed. It will critically evaluate how traditional rules apply to cyberspace disputes. What procedure a court adopts to assume jurisdiction, and in what circumstance a judge may grant permission to serve a foreign defendant in a libel claim[160].

1. How the physical presence of a foreign defendant is established in cyberspace

[156] Hollis, D. B., & Ohlin, J. D., (2018), 'What if cyberspace were for fighting?', Ethics & International Affairs, Vol 32, Issue 4, pp 441-456; Post, D. G., (2008), 'Governing cyberspace: Law. Santa Clara Computer and High', Technology Law Journal, Vol 24, Issue 4, pp 883.
[157] Feng, X., (2011), 'Impacts of the Internet on Traditional Jurisdictional Principles in International Civil & Commercial Cases', Front. Law China, Vol 6, Issue 3, pp 387–402.
[158] How is it different from other mediums.
[159] The optimistic claims now being made about the internet are merely the most recent examples in a tradition of technological utopianism that goes back to the first transatlantic telegraph cables, 150 years ago: Shokri-Ghadikolaei, H., & Fischione, C., (2016), 'The transitional behavior of interference in millimeter wave networks and its impact on medium access control', IEEE Transactions on Communications, Vol 64, Issue 2, pp 723-740.
[160] It is a common practice that in 'severe criminal cases' the judges do not hesitate to allow a claimant to serve a writ to foreign defendant.

2. Can a writ be served to an 'out of jurisdiction' defendant (using other methods[161])?
3. What are the 'connecting factors' and 'choice of law' rules?

3. **Section-3:**

In this section, the above-explained principles will be applied to social media defamation cases. This will be the main section and will determine whether the existing laws of jurisdiction are still applied effectively in tandem with the Defamation Act 2013.

1. Do judges create new laws to resolve a cyberspace case[162]?
2. Are the 'choice of law' rules applied uniformly to cyberspace cases[163]?
3. Do English laws facilitate 'forum shopping' in social media libel cases[164]?
4. What practical problems arise when applying traditional jurisdiction rules of "place of the wrong"[165]?
5. Do Section 1 and Section 9 override the 'forum non-conveniens' principle?
6. Which practical difficulties arise in the application of Private International Law rules to social media libel?

This part will examine the practical application of jurisdictional rules because civil jurisdiction is not merely an exercise of power, but also a means of resolving private disputes. The whole idea is to analyse the courts' approaches in social media cases before and after the 2013 Act.

[161] *Barton v Wright Hassall* [2016] EWCA Civ 177; *Cifal Group v Meridian Securities* [2013] EWHC 3553 (Comm). At various occasions, service via internet is accepted; however, on some occasions it was not accepted by courts. Tieu, H., (2012), 'Substituted service of legal documents via Facebook: "like" or "unlike" by Australian courts', Colin Biggers & Paisley Lawyers, online url: http://www.cbp.com.au/publications/2012/december/substituted-service-of-legal-documents-via-faceboo#page=1 [Assessed 14th February 2019].

[162] Kleven, A. R., (2018), 'Minimum virtual contacts: A framework for specific jurisdiction in cyberspace', Michigan Law Review, 116(5), 785-810; Reed, C., (2018), 'Why judges need jurisprudence in cyberspace', Legal Studies, Vol 38, Issue 2, pp 263-278; Daskal, J., (2018), 'Borders and bits', Vanderbilt Law Review, Vol 71, Issue 1, 179-240.

[163] Jurisdiction will only decide whether and where the claimant sues… the next steps are choice of forum and choice of law.

[164] Blanco, E. M., & Pontin, B., (2017), 'Litigating extraterritorial nuisances under english common law and UK statute', Transnational Environmental Law, Vol 6, Issue 2, pp 285-308.

[165] When conflicts of law arise, courts must decide which law will govern. Can the place of "wrong" aid courts in the decision between laws.

1.11.: Summary:

"Transactions in cyberspace are no different from cross-border transactions occurring in the real space… Both involve people in real space in one territorial jurisdiction transacting with people in real space in another territorial jurisdiction."
Goldsmith[166]

This research intends to highlight that cyberspace jurisdiction requires clear principles rooted in international law. These uniform principles will persuade sovereign courts to adopt a linear approach[167] to assume jurisdiction[168]. This consistency may allow abolishing 'enforcement of foreign judgment' and concurrent jurisdiction issues altogether. For instance, Dr Cullen[169] was awarded damages because the judge found the defendant's conduct defamatory; however, he was denied any practical relief because the enforcing court concluded otherwise (see-6.2.3.1). Therefore, a linear approach means that a victim will get legal protection anywhere in the world. Judges will receive consistent information from a single source for all cyberspace civil disputes. This will ensure legal certainty for transnational cyberspace disputes. It will also help minimise various other cyberspace-based crimes because the application of the uniform choice of law will produce predictable judgments[170].

1.11.: Conclusion:

This chapter concludes that the practical difficulties in the application of private international law rules arise due to the borderless nature of cyberspace. However, this does not mean that there is an urgent need to abolish existing jurisdictional laws. In the current political situation, each country may want to prosecute its citizens within its state-based legal system. However, once a proper protocol is followed, any court can assume jurisdiction over any internet user.

[166] Goldsmith, J. L., (1998), 'Against Cyber-anarchy', The University of Chicago Law Review, Vol 65, Issue 4, pp 1199-1250.
[167] *Cullen v White* [2003] W ASC 153.
[168] A unilateral legislative reforms may offer an authentic solution to address cross-jurisdictional issues; however, an international cooperation (linear approach) may also provide the required solution.
[169] *Cullen v White* [2003] WASC 153; Dr Cullen had difficulties trying to enforce the judgment against Mr White, however, the publicity which has surrounded the award of damages has gone a long way towards restoring his reputation. It may not be an ideal position for most of the claimants.
[170] Michael, M., (2016), 'Unification of choice-of-law rules for defamation claims', Journal of Private International Law, Vol 12, issue 3, pp 492-520.

This research encourages the lawmakers to authenticate specific laws for cyberspace transaction because previously it was seen as the new source of economic growth; the area to invest in. However, social media made people look it more rationally. Now it has become a part of everybody's life. It can affect a person just like a student; can be affected in a classroom.

1.12.1.: Next chapters:

The validity of traditional rules can only be judged if the interconnected elements of private international law, including jurisdiction, choice of law and declining of jurisdiction are determined. It is detailed in the following chapters:

1. The relevant literature on cyberspace and evaluation of defamation rules (Ch.2)
2. The method used to conduct this research (Ch.3)
3. What are the private international law principles (Ch. 4)
4. How traditional precedents apply to modern social media libel (Ch. 5)
5. How judges assume jurisdiction in the multistate online environment (Ch. 6)
6. What practical difficulties are caused by the application of these regulations to social media libel claims (Ch. 7)
7. Is there any need for new libel laws for social media (Ch. 8)
8. What can be concluded from this research (Ch.9)

Chapter 2

EVOLUTION OF LITERATURE

This chapter outlines a critique of literature in the relevant key areas. It is designed to provide a contextual academic background to this research, which will form the basis of the next chapters. It has three sections:

Part A: Characteristics of cyberspace
Part B: Nature of communication in cyberspace
Part C: The Defamation Act 2013

Part A

Characteristics of Cyberspace

2.1.: Overview of the literature:

The progression in computer technology, innovation in user-generated content and the glorification of remote networking devices has changed many things, including data sharing, free flow of media content, and the ability to accumulate and transfer information quickly and efficiently[171]. The excitement that surrounds the internet is due to the flexibility of communication and availability of infinite information online[172]. This advancement of intertwined connections between computing and communication will continue producing revolutionary changes[173]. These changes constantly affect how people, who have become more sophisticated in the use of technology, live across the globe[174]. Furthermore, the availability of high-speed internet connections, a user-friendly atmosphere and the provision of a wide variety of applications have increased the number of cyberspace users dramatically[175]. Three billion people are connected to the internet today[176] and it will grow to 51.5% by 2019[177].

The prominence of and interest in social media websites contributed to a revolution in the advertisement and communication industries that transformed the moral perception of cyberspace[178]. It is proving hard to regulate the behaviour of internet users and the

[171] Briscar, J. R., (2017), 'Data transmission and energy efficient internet data centres', American University Law Review, Vol 67, Issue 1, pp 233-267; Polonetsky, J., & Gray, S., (2017), 'The internet of things as a tool for inclusion and equality', Federal Communications Law Journal, Vol 69, Issue 2, pp 103-118; Mangan, D., (2015), 'Regulating for Responsibility: Reputation and Social Media', International Review of Law, Computers and Technology, Vol 29, Issue 1, pp 16-32.

[172] Meltzer, J. P., (2015), 'The Internet, Cross-Border Data Flows and International Trade', Asia & the Pacific Policy Studies, Vol 2, Issue 1, pp 90-102; McLean, D., (2002), 'Internet defamation', Communications and the Law, Vol 24, Issue 4, pp 21-38.

[173] Rosenberg, D., (2018), 'How 5G will change the world', World Economic Forum Annual Meeting, 23-26 January, Davos-Klosters, Switzerland; the new technology will usher in the age of fifth generation (5G) telecommunications; this technological evolution will lead to dramatic societal changes.

[174] Beck, U., (2018), 'What is globalization?' (3rd Ed, John Wiley & Sons, US), Ch. 2, pp 64.

[175] The rich graphical interface, flexible end-user applications, entertainment, and facility of social interaction have attracted users of all ages to social media.

[176] Internet Live Stats: http://www.internetlivestats.com/internet-users/#trend [Assessed 28th July 2018]

[177] The Statistic Portal: Global Internet User penetration; http://www.statista.com/statistics/325706/global-internet-user-penetration/ [Assessed 28th July 2018].

[178] The Jubilee Centre (2016), 'The Influence of Parents and the Media', University of Birmingham press release; available online: https://theconversation.com/is-social-media-messing-with-childrens-morals-62579 [Assessed 28th August 2018].

publication of user-generated content[179]. Particularly with smartphones, which have pre-installed electronic and communication information dissemination systems (see-5.8.4), the ideas of social interactions have changed[180]. There has been a 13% increase in the number of people using social media sites in 2018[181]. These social networks allow the exchanging of opinions and quick publication without relying on the traditional mass media intermediaries[182]. Social networking sites, apps and platforms are equally organic and dynamic. These networks compete with emerging platforms to continue to develop the technological and economic[183] infrastructure they occupy. They are constantly evolving to fulfil the needs of their users, which in turn allows them to attract more users.

Monthly[184] more than 25 billion individual items are shared on Facebook alone (see-Table-1 (A)). According to the House of Lords Communication Committee reports[185], 34 million people use Facebook and 15 million Twitter users contribute 500 million tweets every day. Probably the lack of adequate checks and balances encourages users to share anti-social material via social networks[186]. It can be used as a tool by criminal-minded/discontented users to victimise[187], threaten, harass, commit fraud and post revenge porn[188]. There are many organisations (ISIS and Al-Qaeda[189]) who threaten/blackmail/groom online audiences and attempt to recruit innocent teenagers to

[179] Mason, G., & Czapski, N., (2017), 'Regulating cyber-racism', Melbourne University Law Review, Vol 41, Issue 1, pp 284-340.
[180] *US Telecom Association v FCC* [2016] 825 F.3d 674 (D.C. Cir).
[181] Chaffey, D., (2018), 'Global social media research summary 2018', Smart Insight available at: https://www.smartinsights.com/social-media-marketing/social-media-strategy/new-global-social-media-research/ [Assessed 11th July 2018]; the latest culture moved towards commercialisation because social interactions, fake news, anonymity and online adds are the famous trends in cyberspace.
[182] Joyce, D., (2015), 'Internet freedom and human rights', European Journal of International Law, Vol 26, Issue 2, pp 493-514.
[183] They also meet the objectives of their owners.
[184] Constine, J., (2018), 'Facebook boosts daily users to 1.45 B '; https://techcrunch.com/wp-content/uploads/2018/04/facebook-q1-2018-dau-slide.png?w=730&crop=1 [Assessed 11th May 2018].
[185] House of Lords, (2015), Cybercrime and cyber security: Key issues for the 2015 Parliament, Parliamentary business, Publication and Records (HL).
[186] Amedie, J., (2015), 'The Impact of Social Media on Society', Advanced Writing: Pop Culture Intersections, Vol 2, pp 24.
[187] Lavorgna, A., (2015), 'Organised crime goes online: Realities and challenges', Journal of Money Laundering Control, Vol 18, Issue 2, pp 153-168.
[188] Pollack, J. M., (2016), 'Getting even: Empowering victims of revenge porn with a civil cause of action', Albany Law Review, Vol 80, Issue 1, pp 353.
[189] Softness, N., (2016), 'Terrorist communications: Are Facebook, twitter, and google responsible for the Islamic state's actions?', Journal of International Affairs, Vol 70, Issue 1, pp 201-21; The reasons that youths join terrorist organizations such as ISIS have little to do with being poor, brainwashed, a Muslim, or a psychopath, and more to do with vulnerabilities in human nature exacerbated by aspects of Western society.

fulfil their illegal purposes[190]. These groups use social networks effectively to influence vulnerable and antagonised teens[191]. They influence and encourage disaffected youths to commit acts of violence on behalf of their extremist causes[192]. There are various criminals and dark-web operators[193], who create and distribute graphic, violent and threatening messages, images, and videos seeking to instil fear within the target audience[194].

There is no single economic, religious, ethnic, cultural, or educational profile for a violent extremist because there is no universal standard for criminal/illegal expressions in cyberspace[195]. At times, this flow of unrestricted information can bring a revolution and may aid in the overthrow of democratic governments[196], incite hatred, discrimination, hostility, violence, or provoke rebellion[197]. The cultural shift in the political dynamics of the real world is also changing digital conduct and social

[190] Zeitzoff, T., (2017), 'How social media is changing conflict', Journal of Conflict Resolution, Vol 61, Issue 9, pp 1970-1991; Social media increasingly plays a role in conflict and contentious politics. Politicians, leaders, insurgents, and protestors all have used it as a tool for communication.

[191] Haque, O. S., (2015), 'Why are young Westerners drawn to terrorist organizations like ISIS?', Modern Medicine Network, Vol 32, Issue 9, pp 14; Attacks by violent extremist are not limited to those inspired by the ideology of groups such as ISIS and al-Qaeda. It may also involve individuals seeking recourse from some non-ideologically inspired grievance.

[192] Cohen, J. D., (2016), 'The next generation of government CVE strategies at home: Expanding opportunities for intervention', the American Academy of Political and Social Science, Vol 668, Issue 1, pp 118-128.

[193] Ghappour, A., (2017), 'Searching places unknown: Law enforcement jurisdiction on the dark web', Stanford Law Review, Vol 69, Issue 4, pp 1075.

[194] Maras, M., (2017), 'Social media platforms: Targeting the "found space" of terrorists', Journal of Internet Law, Vol 21, Issue 2, pp 3.

[195] Child pornography, terrorism, suicide materials, spyware and censorship are issues on which laws vary dramatically internationally, and yet each website is typically available globally. Nations have different ages at which a person is no longer regarded as a child; freedom of speech issues arise with terrorism issues (plans to make a bomb) and suicide information, but the law must address the easy reach of such material in the digital age, in ways that in other contexts may be considered draconian. Censorship laws for print and television are ineffective for online materials. Cyberspace in its nature does not recognise borders and it raises questions regarding security of transactions, standards and protection, legally and otherwise, in an international context.

[196] In China, Facebook was blocked following the July 2009 'Urumqi riots' because Xinjiang independence activists were using Facebook as part of their communications network; Arguably officials can order to shut down social networks in time of public unrest. However, "viral silence may have as many dangers as viral noise.

[197] Trottier, D. and Schneider, C., (2012), The 2011 Vancouver riot and the role of Facebook in crowd-sourced policing, BC Studies: The British Columbian Quarterly, Vol 175, pp. 57-72. The Riots Communities and Victims Panel (Darra Singh OBE, Simon Marcus, Heather Rabbatts CBE, Maeve Sherlock OBE) accepted that 2011 disorder was fuelled by social media, "UK riots 'made worse' by rolling news, BBM, Twitter and Facebook".

communication[198] (see-2.5). It demands the reconstruction of speech regulations because the traditional mode of communication has been transformed[199] (see-7.21).

Picture-1: http://www.visualcapitalist.com/internet-minute-2018/ [Assessed 4th July 2018]

Picture-1 shows that social media is a big source of the flow of information[200]. It promotes social interactions that can lead to an increase in many forms of conflicts; however, social media libel is the objective of this research. This thesis will use this information as a starting point to evaluate whether a change in defamation laws for social networks is required. It becomes critical to examine the 'characteristics of online communication' with respect to 'freedom of expression' and when such freedom transforms into defamation.

[198] People have the tendency to select only those parts of a message that they want to hear. One reason is that decision-makers and policymakers, like all people, will react differently depending on objectively equivalent descriptions of the same problem.

[199] Social media is here to stay. The officials have to think outside the box i.e. if we wish to understand this phenomenon, capitalise on its benefits, and prevent or minimise its negative effects in relation to crime and the criminal justice system.

[200] Sharing data can offer benefits, but what to share and who to share with, is up to the subscribers, so they should also be responsible for the legal consequences if the shared data is inappropriate.

This section will review the following areas:

1. The functions and characteristics of cyberspace
2. The possibility to regulate cyberspace
3. The ownership of cyberspace
4. The applicable laws to online communication
5. Are the existing laws consistent and in line with domestic legislation?
6. The grounds to assume jurisdiction in cyberspace communication

2.2.: Cyberspace: Characteristics and functioning:

"The Internet is becoming the town square for the global village of tomorrow".
Bill Gates[201]

Scholars have conceptualised[202] that cyberspace makes this world a global village[203] but social media has converted that village into a community by causing many socio-cultural upheavals[204]. It is a socially based shopping mall of cyberspace[205], which consists of many groups from different backgrounds and histories[206]. There may be people who have never met but still share their emotions, feelings and circumstances (see-2.4.3). It has transformed the way families, colleagues and friends communicate with each other by reducing the importance of sovereign borders because it has no physical parameters[207] (see-2.6). Smartphones with built-in communication software

[201] David L. G., (2008), I-Quote: Brilliance and Banter from the Internet Age [Lyons Press, UK], pp 6.
[202] Junho, H. C., James A. D., (2002), 'Making a Global Community on the Net – Global Village or Global Metropolis?: A Network Analysis of Usenet Newsgroups', Journal of Computer-Mediated Communication, Vol 7, Issue 3; Hancock, J., (1998), 'In Borderless Cyberspace : The Cross Jurisdictional Validity of Electronic Signature and Certificates in Recent Legislative Texts', Jurimetrics, Vol 38, Issue 3, pp 301-315; McLuhan, M., & Powers, B., (1989), 'The global village: Transformations in world life and media in the 21st century' (1st Ed, Oxford University Press, NY), pp xii.
[203] Manjikian, M.M., (2010), 'From global village to virtual battlespace: The colonizing of the internet and the extension of realpolitik', International Studies Quarterly, Vol 54, Issue 2, pp 381-401; internet-based networks, satellite transmission and electronic communication technology vanished time and space - people from around the world can communicate instantly as if they lived in the same village.
[204] Gummerus, J., Liljander, V., & Sihlman, R., (2017), 'Do ethical social media communities pay off?: An exploratory study of the ability of Facebook ethical communities to strengthen consumers' ethical consumption behaviour', Journal of Business Ethics, Vol 144, Issue 3, pp 449-465.
[205] It is 24/7 accessible and have no security guards to stop or control the conduct and behaviour of shoppers.
[206] Meder, J. W., (1997), 'A visit to the cyberspace mall: Who owns a web site address?', Duquesne Law Review, Vol 35, Issue 4, pp 989.
[207] Schmitt, M. N., & Vihul, L., (2017), 'Respect for sovereignty in cyberspace', Texas Law Review, Vol 95, Issue 7, pp 1639-1670; Walton, B. A., (2017), 'Duties owed: Low-intensity cyberattacks and liability for transboundary torts in international law', Yale Law Journal, Vol 126, Issue 5, pp 1460-1519; Hildebrandt, M., (2013), 'Extraterritorial jurisdiction to enforce in cyberspace?, Bodin, Schmitt, Grotius in cyberspace',

and continued technological evolution are further fading these barriers[208]. The physical world has geographical boundaries but cyberspace itself has no physical parameters but horizons[209]. However, these worlds are not separated from each other. The actions/communication of cyberspace users have direct effects in the physical world[210]. Cyberspace users are based in 'cyber-physical society', in which everyday life is interwoven with electronic devices[211]. Equally, events in physical locations determine events in cyberspace[212]; therefore, the same laws of the physical world can regulate the digital world[213].

2.2.1.: Cyberspace: Definition:

> The evolution of cyberspace marks the creation of a world that is not separate but displaced from the physical world - Magermans[214].

There is no universally accepted definition of cyberspace because it is used in different contexts geographically and interpreted subjectively. International organisations (including the North Atlantic Treaty Organisation and the United Nations) do not have an official definition that can be applied as a standard. This ubiquitous term encompasses a wide variety of complex areas[215]. In this thesis, to elaborate the jurisdictional issues relating to cyberspace, it is necessary to use a preferred definition. This thesis compares the Oxford English Dictionary and the ISO/IEC (International Organisation for Standardisation/International Electrotechnical Commission) definitions

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University of Toronto Law Journal, Vol 63, Issue 2, pp 196-224; Any advancement in communication technology will undoubtedly feed the growth of virtual communities without borders by physical users.

[208] Zeitzoff, T., (2017), 'How social media is changing conflict', Journal of Conflict Resolution, Vol 61, Issue 9, pp 1970-1991; For instance, Skype's new translator service heralds the beginning of the first widely available real-time translation technology. It translates speech and speaks it in another language. Similarly, Twitter and Facebook have launched many new features.

[209] Cyberspace is not an isolated and inaccessible world; but rather this world is within reach of everyone; the only requirement is to have the equipment (computer and internet connection).

[210] Awan, I., & Zempi, I., (2017), 'I Will Blow Your Face OFF'—VIRTUAL and Physical World Anti-muslim Hate Crime', The British Journal of Criminology, Vol 57, Issue 2, pp 362-380; Anti-Muslim hate campaigns online resulted in increase in hatred crimes against Muslim in London.

[211] An increasing number of physical objects feature an IP (Internet Protocol) address for internet connectivity and use the Internet for communication. Information and communication systems and the physical infrastructure have become intertwined, as information technologies are further integrated into devices and networks.

[212] Magermans, A., (2004), 'Architecture and cyberspace', Intelligent Agent, Vol 4, Issue 3

[213] Avellan, J., (1998), 'The Cross-jurisdictional Validity of Electronic Signature and Certificates in recent Legislative Text', American Bar Association, Vol 38.

[214] Magermans, A., (2004), 'Architecture and cyberspace', Intelligent Agent, Vol 4, Issue 3.

[215] Rajnovic, D., (2012), Cyberspace-what is it?, Cisco Blog https://blogs.cisco.com/security/cyberspace-what-is-it/ [Accessed 23rd July 2018].

to frame and then understand the corresponding characteristics and nature of cyberspace:

1. **Definition 1:**

   "The space of virtual reality, the notional environment within which electronic communication via the internet occurs[216]".

2. **Definition 2:**

   "The complex environment resulting from the interaction of people, software and services on the internet using technology devices and networks connected to it, which does not exist in any physical form[217]".

The above comparison provides the following simple definition: "A domain, portrayed by the use of electromagnetic and electronics realm to save, modify and transfer data via a networked system and associated physical infrastructure i.e. the connection of humans through computers and telecommunication regardless of physical geography[218]".

2.2.2.: Elements of cyberspace:

"This world—cyberspace—is the world that we depend on every single day... [it] has made us more interconnected than at any time in human history[219]"- Barack Obama.

From the above comparison, there are three vital elements of cyberspace:

1. Tangible - humans and computers
2. Intangible - electromagnetic pulses and binary data
3. Network-related items - telecommunication and physical infrastructures

[216] Oxford English Dictionary, Available online at: http://www.oxforddictionaries.com/definition/english/cyberspace [Accessed 22nd July 2017].
[217] ISO/IEC 27032 (2012), Information Technology -- Security techniques -- Guidelines for cybersecurity http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=44375 [Accessed 22nd January 2018].
[218] Rajnovic, D. (2012), 'Cyberspace – What is it?' Cisco blog, security: What is it? Found online at: https://blogs.cisco.com/security/cyberspace-what-is-it/[Accessed 7th March 2018].
[219] International Strategy for Cyberspace 2011: https://www.whitehouse.gov/sites/default/files/rss_viewer/international_strategy_for_cyberspace.pdf [Assessed 8th December 2017].

From the above elements, this thesis finds most relevant ingredients:

1. The claimant and the defendant - tangible elements
2. The place of upload and download - intangible elements
3. The ISPs and the content providers - network-related elements

The elements identified by this thesis are the required components for both the internet and cyberspace or social media, as listed in Table-2.

Table-2: Important Elements

#	**INTERNET**	**CYBERSPACE**	**FOR THIS THESIS**
1	Tangible	Humans and computers	The claimant and the defendant
2	Intangibles	Electromagnetic pulses and binary data	The place of upload and download
3	Network Related	Telecommunication and physical infrastructures	The ISPs and the content providers

So the internet and cyberspace can be interchangeable terms. However, technological differences exist, which are critical to understand because cyber-law literature argues that the outcome of many cyberspace issues depends on the court's perspective of the internet and how it operates[220] (see Table-3).

[220] Frischmann, B. M., (2003), 'The prospect of reconciling internet and cyberspace', Loyola University of Chicago Law Journal, Vol 35, Issue 1, pp 205.

Table-3[221]: Cyberspace Perspective View

Perspective	**Cyberspace Users**	**Judges Perception**
Traditional view: It is based on external perspective of Internet	The social media user who is logged in and accepts cyberspace as a virtual reality	Online user, exists in the physical world and communicates with others using the local network
Internet view: It is based on internal perspective	A computer with internet connection provides a link to virtual world which is roughly analogous to the physical world of real space. The user uses a keyboard/mouse/finger to go shopping.	The internet is a network of computers located around the world and connected by wires and cables. The hardware sends, stores, and receives communications; using protocols. Keyboards/mouse input sources to the network and monitors are a destination for the output.

This is what this thesis is trying to achieve by applying traditional laws to two different realities, two existing worlds. One is the actual world and the other is the virtual world. The virtual reality is only accessible via human interactions. Therefore, if the laws are applied to 'human behaviour' rather than the technology, there will be no need for a new set of law.

2.2.3.: The internet or cyberspace:

The internet is a physical infrastructure because computers, network cables, routers, switches all make up the internet. Its elements can be seen, touched, unplugged or

[221] This table is inspired from the authors who observed that the two dominant perspectives of the Internet are the internal perspective and the external perspective: Kerr, S., (2003), 'The Problem of Perspective in Internet Law', GEO. Law Journal, Vol 91, pp 357 and Frischmann, B. M., (2003), 'The prospect of reconciling internet and cyberspace', Loyola University of Chicago Law Journal, Vol 35, Issue 1, pp 205.

moved[222]. Whereas cyberspace is not real. It is a virtual concept which is created by the existence of the internet[223]. It is the place where social media users can communicate with each other.

2.3.: Cyberspace: An internet metaphor:

Cyberspace, also known as 'the internet', has become a conventional means to describe anything associated with internet culture[224]. However, cyberspace should not be confused with the internet because it refers to objects (modems, routers, cables and computers) which exist within the communication network[225]. For instance, a website might be metaphorically said to exist in cyberspace[226], but the activities performed on the internet are not happening at the physical location of the user or a server but in cyberspace, which is a conceptual place without any physical dimensions[227]. It is debatable, whether all internet communications traverse jurisdictional borders; however, this thesis presumes that a significant proportion of all internet communications are characteristically trans-border[228].

For this study, to adjust the legal complexities surrounding jurisdiction, it is pivotal to differentiate between the internet and cyberspace because communication or the entities of a networking system, in fact, exist in cyberspace (see Table-4). Besides, courts have seen cyberspace as a 'metaphor' to eliminate the perception of treating the internet 'just

[222] It is easy to put constraint on infrastructure because users may avoid legal constraints but they cannot avoid technological restraints; Lessig, L., (1999), 'Code and Other Laws of Cyberspace', (Routedge Publishers, London), pp 233-239.

[223] Kleve, P., & Mulder, R., (2008), 'Code is Murphy's Law', International Review of Law, Computers and Technology, Vol 19, Issue 3, pp 95-107.

[224] Damayanti, M., & Yuwono, E., (2013), 'Avatar, identitas dalam cyberspace', Nirmana, Vol 15, issue 1, pp 13-18; Stockl, A., (2003), 'The Internet, Cyberspace, and Anthropology', Cambridge Anthropology, Vol 23, Issue 3, pp 67-78; Lessig, L., (1999), 'Code and other Laws of Cyberspace', (Basic Books Publication, New-York), pp 108.

[225] The internet is a physical reality but cyberspace is an experience of being online, using the physical Internet. It is the sense of space generated within the mind while interacting through computer technology.

[226] Graham, M., (2013), Geography/Internet: Ethereal Alternate Dimensions of Cyberspace or Grounded Augmented Realities, The Geographical Journal, Vol 179, No 2, pp 177-188.

[227] Strate, L., (1999), 'The Varieties of Cyberspace: Problems in Definition and Delimitation', Western Journal of Communication, Vol 63, Issue 3, pp 385; Edwards, L., & Waelde, C., (1997), 'Law & the Internet: Regulating Cyberspace ', (Hart Publication, Oxford), pp 18.

[228] Meltzer, J. P., (2015), 'The Internet, Cross-Border Data Flows and International Trade', Asia & the Pacific Policy Studies, Vol 2, Issue 1, pp 90-102.

like' the physical world[229]. It is one of the reasons the traditional legal system is unable to adopt the social changes brought about by the internet[230].

Table 4[231]: Cyberspace versus Internet

#	**CYBERSPACE**	**INTERNET**
DEFINITION	The local/domestic/notional environment which allows users to communicate using a computer network	A global computer network providing a variety of information and communication facilities, consisting of interconnected networks using standardised communication protocols
DESCRIPTION	It is the symbolic space or plane that is created by the Internet	It is a global network that is created out of smaller networks made from computers. It allows the transfer of data and information
1st USED	1960	1969
DATA	All data is transferred within the cyberspace	Allows the transfer of data

Conversely, if the internet is different from the real world, then physical world policies should be different for the internet[232]. Whereas, this thesis is analysing whether physical

[229] Alfred, C., (2000), 'Western Frontier or Feudal Society?: Metaphors and Perceptions of Cyberspace', Berkeley Technology Law review, Vol 17, pp 1207-1231; cyberspace as a metaphor is descriptively accurate but the normative question of whether to regulate cyberspace as a place is a different issue. However, courts have been unable to settle on the appropriate analogy and cause of action reflecting one or more specific policies.

[230] Hua, W., (2017), 'Cybermobs, civil conspiracy, and tort liability', Fordham Urban Law Journal, Vol 44, Issue 4, pp 1217.

[231] Lingel, J., (2019), 'The gentrification of the internet'; online Url www.culturedigitally.org [Assessed 14th Jun 2019].

[232] The perception of cyberspace as separate from real space also tends to encourage a belief that cyberspace is an actual jurisdiction separate from the polities that exist in real space and, therefore, should be governed in ways that traditional political processes cannot be trusted to handle; Jonathan J., (2000), 'Cyberspace and the "Devil's Hatband', Seatile U. L. Rev., Vol 24, pp 577- 592.

world regulations can also be implemented to the internet. Thereby, it is imperative to understand the concept of 'virtual-physical presence'.

2.3.: Social presence via cyberspace:

The concept of jurisdiction is internally based, which in turn, shapes the social construction of a country. The social concept of countries becomes irrelevant in cyberspace because it is an open space[233]. Consequently, once the social concept of the country is changed in cyberspace, the concept of jurisdiction must also be changed[234] (see-2.1). Even so, in England, traditional laws still apply to social media disputes, which makes judges analyse two distinct sets of facts for online communicational conflicts (see Table-3):

1. Based on the external perspective
2. Based on the internal perspective[235]

This thesis will not further evaluate this difference because traditional laws are based on physical presence. As detailed above, a user (defendant) cannot be physically present in cyberspace; however, his actions can affect someone (victim) in the real world, by (metaphorically) being in cyberspace (see-2.2.). Besides, the defendant's presence on the internet cannot be separated from their life in the physical world because there is interconnectedness between virtual and real space[236]. For instance, Tom Cruise reputation can still be damaged physically, even when the publisher chooses to limit his course of conduct solely to cyberspace.

2.3.1.: Physical presence:

A statement against the royal family may be acceptable in Pakistan but it is illegal in England[237]. Similarly, religious remarks are 'freedom of speech' in England but they

[233] Goldsmith, J., L., (1998), 'The Internet and the Abiding Significance of Territorial Sovereignty, Ind. J. Global Legal Study, Vol 5, pp 475.
[234] Berman, P. S., (2002), 'The Globalization of Jurisdiction', University of Pennsylvania Law Review, Vol 151, pp 311.
[235] Kerr, O. S., (2003), 'The Problem of Perspective in Internet Law', GEO., Law Journal, Vol 91, pp 357.
[236] Hua, W., (2017), 'Cybermobs, civil conspiracy, and tort liability', Fordham Urban Law Journal, Vol 44, Issue 4, pp 1217.
[237] The Queen and Law, https://www.royal.uk/queen-and-law [Assessed 22nd May 2019]

may be blasphemous in Pakistan. Both states regulate the same act's local effects differently but legitimately. It does not make any unilateral regulation illegitimate; however, this multi regulative scenario causes disharmony when the result becomes multi-jurisdictional (e.g. when a Pakistani makes remarks against the English royal family). In this scenario, English regulation requires extraterritorial effects, which depend on a physical presence (see-7.3).

2.3.1: Extraterritoriality:

The concept of extraterritoriality[238] means that a nation uses the threat of force against local persons or property to punish, and thus regulate, extraterritorial acts that cause domestic harm. It does not (usually) mean that a nation enforces its law abroad[239]. The law of extraterritorial activity is efficacious only to the extent that the defendant has a local presence. It can also be useful if the agent of the act owns local property against which local laws can be enforced[240]. From the above example, physical presence (of Pakistani defendant) is compulsory to serve a writ in England (CPR r3.6). If court documents can be served on this Pakistani defendant in England, it establish English court's jurisdiction. This service can be to property, business or personal address (see-2.12). Similarly, the presence of a foreign defendant in English territory also denotes acceptance of the jurisdiction of English courts (see-4.5.2, 6.9).

2.3.1.1.: The concept of physical presence:

Physical presence[241], as a basis of jurisdiction is a long-standing precedent of common law[242]. For the individuals 'presence' is defined in a literal sense. In the case of

[238] Extraterritoriality is not merely a transition, but an original feature of the global legal order, arising out of modern imperialism and imperial rivalry and yet conducive to the forging of new instruments of international law and governance: Todd, D., (2018), 'Beneath sovereignty: Extraterritoriality and imperial internationalism in nineteenth-century Egypt', Law and History Review, Vol 36, Issue 1, pp 105-137.

[239] Szigeti, P. D., (2017), 'The illusion of territorial jurisdiction', Texas International Law Journal, Vol 52, Issue 3, pp 369-399; There is a general uncertainty in what counts as "territorial" and what counts as "extraterritorial" jurisdiction, and this is the result of the almost complete lack of geographical information in jurisdictional discourse. This phenomenon is demonstrated by the impossibility of the cartographic-mapping of jurisdiction. The lack of a geographical connection means that most jurisdictional conflicts are better described as conflicts between communities and their legal orders, without a territorial connection.

[240] Goldsmith, J., L., (1998), 'The Internet and the Abiding Significance of Territorial Sovereignty, Ind. J. Global Legal Study, Vol 5, pp 475.

[241] A claimant who sights his/her defendant within the territory of the English court can serve the writ on the defendant and the court is automatically seized of the matter.

[242] Dicey and Morris, (1993), 'the Conflict of Laws, (12th Ed, Sweet & Maxwell, London), pp 270–271.

Wildenstein[243] case, both the claimant and the defendant were foreign nationals. The court exercised its jurisdiction because the writ was served on the defendant when he came to visit England. The defendant argued that it was an abuse of the court's process because it was frivolous and vexatious (see-2.3.1.2). The judge decided that the claimant had properly served the writ and invoked the English court's jurisdiction. Traditionally, a weak link with England may be enough for the courts to assume jurisdiction because serving the 'summons' to the defendant in England produces enough connection, albeit a tenuous one[244].

The *Sarlie*[245] case set this precedent for English courts to assume jurisdiction if there is only a limited connection with England, but the writ is served in England (see-6.6.2). However, where a defendant is enticed, fraudulently lured or kidnapped to the jurisdiction of the court so a writ can be served on him, the court may invalidate such service[246]. Executives of a foreign company who visit England do not bring the company within the jurisdiction of the court[247]. However, if the defendant is an organisation/corporation/industry, they are considered 'present' in England if trading, directly or indirectly, in England (see-6.8.1.1).

2.3.1.2.: The English 'writ-rule':

This rule may not be adaptable to social media technology and remoteness of the data (see-2.3.2). It has been criticised by legal writers, both within and outside the common law jurisdiction, long before the advent of the internet[248]:

1. Graveson[249] noted that the service as a ground for jurisdiction is exorbitant;

[243] *Maharanee of Baroda v Wildenstein* [1972] 2QB 283; it is a classic example to explain the English approach because this case involves a French resident who bought a painting from another French resident. However, the English court assumed jurisdiction because the writ/warrant/summon was served on English soil.
[244] South India Shipping v Bank of Korea [1985] 1 Lloyds Rep 413; English court assumed jurisdiction over Korean company despite very little connection in England.
[245] *Colt Industries v Sarlie* [1996] 1 ALL ER 673; a short visit to England was sufficient to serve the foreign defendant.
[246] *Watkins v North American Timber* [1904] 20 T.L.R. 534; a service of writ by a fraudulent act will be void.
[247] If the defendant, individual or corporate, is not present in England but has agreed that solicitors located in England can accept documents on the defendant's behalf, then the service of writ to the solicitors will be sufficient to invoke the English court's jurisdiction over the foreign defendant.
[248] McCLean, D., &Nigm, R.A, (2012), 'Morris: The Conflict of Laws', (8th Ed, Sweet & Maxwell, London), pp 112-114.

2. Minor[250] stated that this rule is more akin to robbery than justice;
3. North and Fawcett [251] are of the view that this rule may lead to a situation where the English court exercise jurisdiction over a case, which may be foreign regarding subject matter and parties.

This thesis disputes this criticism because despite applying traditional jurisdictional laws to exercise jurisdiction over an overseas defendant, English law is not by-default applicable (see-4.3.3). The court will have to implement 'choice of law principles' to identify appropriate applicable law. It does not matter if an overseas defendant/claimant is before an English court because the judge may apply 'foreign law' if that is the proper law (see-6.4.2). Not only that, English court can exercise its discretion to stay/decline its jurisdiction if it forms the opinion that the action should have been brought elsewhere (see-4.5.4).

The analysis of the internet versus cyberspace indicates that the dimensions of jurisdiction may change[253] because in the absence of online-physical presence, different rules are required for both physical and virtual defendants (see-2.3.2). Here is why the internet is a computer network whereas cyberspace is that 'imaginary network' visualised as a virtual space[254]. For instance: Consider a book as the internet. It provides information similar to the way in which the internet transfers data. A reader reads a story from the book and imagines the characters and dialogues played out in the story. This virtual reality is called cyberspace on the internet. That is how internet users imagine the information they read on the internet. These terms are interchangeable. Before anything, there is a difference between physical presence of human behaviour and the data used online. It depends on the storage of the data whether it is stored via Icloud or on a physical server?

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[249] Graveson, R.H., (1977), 'Comparative Conflict of Laws, Selected Essays', (Vol I, North Holland Publishing, Oxford), pp 9.
[250] Minor, R., (1901), 'Conflict of Laws' (1st Ed, Boston), pp 283.
[251] North, P., Fawcett, J., (1999), 'Cheshire and North Private International Law', (13th Ed, OUP, Oxford), pp 32.
[253] A user may be present in the internet via computer or network cable whereas in cyberspace he cannot be physically present because it is a digital realm, so law cannot be applied in absence of presence.
[254] Cyberspace is nothing more than a symbolic and figurative space that exists within the scope of internet; it may be considered a subdivision of the internet.

2.3.2.: Physical location of data:

The internet may be a network of networks, but cyberspace includes software, hardware, internet protocols, standards, biometrics and privately controlled governance structures[255]. The 'design of software', 'infrastructure of hardware' and other elements form cyberspace within which social media users communicate with each other. Therefore, every component of cyberspace architecture has the potential to be regulated by law[256].

In the context of this chapter, cyberspace or the internet is a collection of inter-networked systems of computers, which spans the entire earth[257]. The focus will be on identifying where the internet is or, in fact, where the internet programs, data or files are saved (see-2.4). The location, the data is stored in, will determine the applicable law[258]. Before the internet era, information could only be stored in one physical place, but in cyberspace, the data is stored in an anonymous location (iCloud[259]).

Notwithstanding, the storage of information in the modern era does not affect the retrieval of data as long as it is consistent with Article 19[260] (see-7.21). It allows freedom to receive and impart information and ideas through any media, regardless of frontiers. For instance, considering the stats in Picture-1, the following users use cyberspace for a variety of purposes. The head offices of most of these sites operate from the US but the relevant information is available to everyone regardless of geographical difference[261].

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[255] Marton, E., (2017), 'Violations of personality rights through the Internet: jurisdictional issues under European law (Nomos, e-library.com), Ch. 2, pp 55-70.

[256] Callamard, A., (2017), 'Are courts re-inventing internet regulation?', International Review of Law, Computers & Technology, Vol 31, Issue 3, pp 323.

[257] Graham, M., (2012), Geography/Internet: Ethereal Alternate Dimensions of Cyberspace or Grounded Augmented Realities, The Geographical Journal, Vol 179, No 2, pp177-188.

[258] Bellovin, S. M., (2017), 'Jurisdiction and the internet', IEEE Security & Privacy, Vol 15, Issue3, pp 96.

[259] Cloud based storage is a computing model where storing, processing and use of data takes place on remotely located computers accessible over the Internet and controlled by third party; Irion, K., (2015), 'Your digital home is no longer your castle: how cloud computing transforms the (legal) relationship between individuals and their personal records', International Journal of Law and Information Technology, Vol 23, Issue 4, pp 348–371.

[260] Universal Declaration of Human Rights (1948); states that everyone has the right to freedom of expression and this includes the right to 'impart information and ideas through any media'; Article 19(2) of the International Covenant on Civil and Political Rights protects freedom of opinion and expression.

[261] The extraterritorial jurisdictional questions are based on the so-called 'country of origin' standard which makes companies subject only to the jurisdiction of the law of the country in which they are established; Wimmer, K., (2003), 'International liability for internet content: Publish locally, defend

Table-1 (A): Digital UK[262]

Total Population of UK 66.38		
#	Users (Millions)	Penetration
Internet	63.06	95 %
Social Media	44.00	66 %
Mobile	49.68	75 %
Active Mobile Social	38.00	57 %

2.3.3.: Physical location in cloud computing:

Today, information stored at a physical location can be remotely moved anywhere without changing underlying services[263]. The dynamic use of cloud computing capabilities makes control over online data highly transient[264]. It raises the issue of data sovereignty and individual privacy[265]. The consumers who use online storage services do not know the actual location of their data nor how many copies of their personal information exists[266]. The actual whereabouts of the data is important for determining jurisdiction and applicability of domestic laws. For instance, to communicate via Outlook.com, a client requires a Microsoft subscription. Microsoft stores its client's data in a nearby data centre when a particular client requests a subscription. At a later stage, the client's data is transferred to another data centre based on the country code of that client's presence[267]. Now if a Bradford university subscriber uses his account in Germany, his data will automatically be transferred to the closest datacentre i.e. data transfer is associated with the client's location[268]. This transfer of data may be temporary or permanent, depending on the IP address of the user's device. So Microsoft

globally', in Thierer, A., & Crews, C., (eds), 'Who Rules the Net? Internet Governance and Jurisdiction' (1st Ed, Cato Institute, Washington), pp 239–68 at 247.

[262] Statista (2018), 'Social media usage in the United Kingdom (UK) - Statistics & Facts', https://www.statista.com/topics/3236/social-media-usage-in-the-uk/ [Assessd 24th August 2018].

[263] *Microsoft Corp v United States* [2017] U.S. LEXIS 6343; Internet data resembles time sharing machine because it can move of its own accord.

[264] Irion, K., (2015), 'Your digital home is no longer your castle: how cloud computing transforms the (legal) relationship between individuals and their personal records', International Journal of Law and Information Technology, Vol 23, Issue 4, pp 348–371.

[265] Chris, R., (2010), 'Information 'Ownership' in the Cloud', Queen Mary School of Law Legal Studies Research Paper No. 45/2010.

[266] *Google Spain, Google Inc v AEPD* [2014] CJEU Case C–131/12; the data is stored temporarily on servers whose state of location is unknown, that being kept secret for reasons of competition.

[267] Gillaspie, A., (2017), 'Extraterritorial application of the stored communications act: Why Microsoft corp. v united states signals that technology has surpassed the law', University of Kansas Law Review, Vol 66, Issue 2, pp 459.

[268] What used to reside in the domestic sphere is now detached from its source and can now even live outside of personal hardware and physical spheres of influence.

has full discretion to control consumer data location at any time, without consumer knowledge. This data transfer does not verify user identity or location because it uses user-provided information during this process. That is how these companies keep unknown users profile anonymous (see-7.18). Officially, Microsoft and other search engines are independent of storing consumer's records on any server within their control[269] (data and privacy laws are beyond the scope).

2.3.4.: Storage of data online:

It is arguable whether the data is physically migrated from one location to another (does it cross borders during that process?). If the data is stored via the cloud, 'which is a network of storage drives in a particular territory[270]', then the data must be considered as a physical object[271]. If it is presumed that the data is physically removed from one location and stored at another location; it will negate the importance of the Norwich Pharmacal Order to disclose anonymous users (see-5.9.3.1). The service provider may argue that the content for the requested account has been transferred to another datacentre in another sovereign state. This would negate any court order to reveal an anonymous user or remove alleged content from their databases[272].

Eventually, the technology companies will try to change the 'storage location' to offshore data barges to avoid being the subject of any sovereign jurisdiction[273]. Google is already trying to patent a water-based data centre, which may enable it to operate outside the impact of any potential jurisdiction of any country's laws[274]. To date, the

[269] Woods, A., (2016), 'Against Data Exceptionalism', Stanford Law Review, Vol 68, pp 729; there are no national restrictions or domestic laws which bind these companies to store consumer data in a specific location.

[270] *United States v Microsoft Corp* [2018] 2nd Circuit 17-2.

[271] Data is an intangible assets, which require same practical steps that can be taken to address jurisdictional conflicts as explained for physical location (see-4.5.2). So location of storage of the data can be used as a connecting factor, regardless if the data is temporarily transferred somewhere else.

[272] The ease with which data travels across states, the seemingly arbitrary paths it takes, and the physical disconnect between where data is stored and where it is accessed critically test these foundational premises.

[273] Lima, M., (2018), 'Future Today: The Data Centres Of 2025', online Url: https://data-economy.com/future-today-the-data-centres-of-2025/; Peter, J., (2015), 'Floating data center is launched'; online Url: http://www.datacenterdynamics.com/content-tracks/power-cooling/floating-data-center-is-launched/95209.fullarticle [Assessed 28th July 2018]; in a not too distant future, humans will depend nearly exclusively on technology. That dependence will create ultimately new opportunities for data centre operators to expand and redesign how facilities are built and operated.

[274] Steven, R., (2011), 'Google Sets Sail: Ocean-Based Server Farms and International Law', CONN. Law Review, Vol 43, pp 716-19.

question remains whether Microsoft (or other content providers) can be classed as the producer of the consumer data; especially for social networks which are based in the US but have subscribers around the globe (see-2.13.2, 5.9.1.1). The above analysis raises questions about concurrent jurisdiction because if the user is based in Germany and his data is stored in Dublin, then there are two physical locations[275], whereas court orders can only be followed within a territorial jurisdiction. This section argues that states (individuals and officials) unilaterally access data located in another jurisdiction, without due regard to data-accessibility rules of the destination state[276]. Equivalently, court orders should also be followed unilaterally, using the same technology (it depends upon the global use of the world wide web (WWW); however, a further investigation of the characteristics of the internet and its structure – TCP/IP (Transmission Control Protocol/Internet Protocol), Modem is prerequisite to understand the WWW regulation.

2.4.: Where is the internet?

The internet was created in 1960 by the US 'Defence Department' and was named Arpanet[277]; however, its economic significance became visible in the 20th century[278]. Today, it has become an integral and fundamental part of daily life, forming a social phenomenon (see-2.1). It influences daily life because it allows people to interact with other users. Internet users can enhance their social communication by exchanging information, learning ideas, playing games, discussing politics, providing social support and even conducting business[279]. This reliance on social networks exposes the need for internet regulation from the perspective of 'freedom of speech' and 'individual rights'[280].

[275] In the event of defamation, there can be three further physical locations, including the location of the ISP, place of harm and the place of cause of action.
[276] This unilateral accessibility of data undermines longstanding assumptions about the link between data location and the rights and obligations because this production of data, located anywhere around the globe, is without regard to the sovereign interests of other nations; *Microsoft Corp* [2015] No. 14-2985-CV 2d Cir.
[277] Advanced Research Projects Agency, a development arm of the US military.
[278] Wittzack, R. U., (2010), 'Principles of International Internet Law', Charlottesville: German Law Journal, Vol 11, Issue11, pp 245-1263.
[279] Brown, J. S., (2000), 'Growing up: Digital: How the web changes work, education, and the ways people learn', The Magazine of Higher Learning, Vol 32, Issue 2, pp 11-20.
[280] Manea, A. C., (2017), 'The security of personal data of users in online socialization networks: Legal aspects, Transilvania University of Brasov, Series VII, Social Sciences Law, Vol 10, Issue 1, pp 179-186.

The facility of online networking has made the internet a very social place, as concluded by Morningstar and Randball[281] in the 1st International Cyberspace Conference, "cyberspace is defined more by the social interactions involved rather than the technology being used". Social interactions are carried out by using social networking, which leads to the subject of this thesis (social media defamation). These interactions are only possible when data is transferred from operating system to network layers[282] (protocol transfer data in the form of packets). The communication between two computers is dependent on common software standards: TCP and IP (see-2.4.1). TCP is the transmission control protocol which establishes and breaks the connections, whereas IP is an internet protocol which assigns a unique numeric address to connected computers[283]. This thesis will use internet characteristics (anonymity, accessibility, retrieval, location etc.) to demonstrate a legal liability (see-2.5.1.2). It is important to understand how the data is stored and retrieved using internet infrastructure (IP, TCP/IP and modem etc.).

2.4.1.: Transfer control protocol:

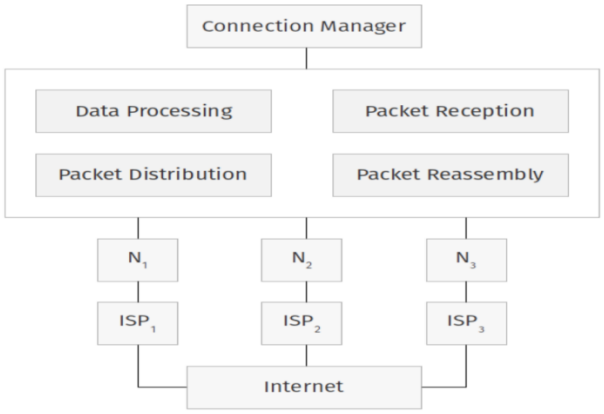
The US Defence Department developed communications protocols to transfer data between computer networks[284]. Protocols are a set of rules for transmitting data between electronic devices, such as computers[285]. Computers exchange information using the same sized packets of information and there must be a pre-existing agreement as to how each side will send and receive them[286]. Transmission Control Protocol (TCP) helps to maintain network conversation because it establishes which application programs can exchange data[287]. It is a connection-oriented protocol, which creates a connection to the

[281] Morningstar, C., & Randall, F., (2003), 'The Lessons of Lucas film's Habitat', Wardrip-Fruin and Nick Montfort (eds.), the New Media Reader, (The MIT Press, Cambridge), pp 664-667.
[282] Arnold, R. D., (2016), 'Strategies for Transporting Data between Classified and Unclassified Networks', ARDEC, WSEC, RDAR-WSF-M Picatinny Arsenal United States, AD1005160.
[283] Kessler, G. C., (2008), 'On Teaching TCP/IP Protocol Analysis to Computer Forensics Examiners', Journal of Digital Forensic Practice, Vol 2, Issue 1, pp 43-55.
[284] Naughton, J., (2016), 'The evolution of the Internet: From military experiment to General Purpose Technology', Journal of Cyber Policy, Vol 1, Issue 1, pp 5-28.
[285] Townes, M., (2012), 'The spread of TCP/IP: How the Internet became the Internet', Millennium, Vol 41, Issue 1, pp 43-64; Protocols are established by international or industry-wide organizations as an agreed standards.
[286] Valdovinos, I. A., Arturo J. P., Villalba, G., & Kim, T., (2017), 'BATCP: Bandwidth-aggregation transmission control protocol', Symmetry, Vol 9, Issue 8, pp 167.
[287] Leung, K. C., Li, V. O., & Yang, D., (2007), 'An overview of packet reordering in transmission control protocol (TCP): problems, solutions, and challenges' IEEE transactions on parallel and distributed systems, Vol 18, Issue 4, pp 522-535.

application programs at each end to finish exchanging messages[288]. It maintains error-free data transmission because it breaks application data into small packets, sends packets and acknowledges all received packets[289]. Whereas, the Internet Protocol (IP) defines how computers send packets of data to each other[290]. TCP and IP are the basic rules, which define the Internet. Together, TCP and IP form a common uniform language TCP/IP (Transfer Control Protocol/Internet Protocol) to transfer data packets from one user to another[291].

For instance, libel content is published using a social media application (Facebook). The web server of the user will send this content using a hypertext markup language (HTML) file to other user's computer application (Facebook). The social media web server uses hypertext transfer protocol (HTTP) to transfer this data. The HTTP program layer will ask the TCP layer to establish a connection and send this content. The TCP will divide this file into small packets and forward them to the IP layer for delivery. All these packets will have the same IP address but they can be sent along different routes. The TCP layer of the client's computer will receive all packets, assemble them and deliver the file to the receiving application (Facebook). See Picture-2.

Picture-2[292]: Connection manager represents TCP/IP



[288] Goralski, W., (2009), 'The illustrated network: How TCP/IP works in a modern network, (1st Ed, Morgan Kaufmann Publishers/Elsevier, Amsterdam), Chapter 2, pp 428.
[289] Qaddoura, E., (2003), 'Method and system for transmission control protocol (TCP) packet loss recovery over a wireless link', U.S. Patent 6,646,987.
[290] Nagle, J., (1984), 'Congestion control in IP/TCP internetworks', ACM SIGCOMM Computer Communication Review, Vol 14, Issue 4, pp 11-17.
[291] Dostalek, L., & Kabelova, A., (2006), 'Understanding TCP/IP: A clear and comprehensive guide to TCP/IP protocols' (Packt Pub, Birmingham, UK), pp 626.
[292] Xu, L., Xu, K., Jiang, Y., Ren, F., & Wang, H., (2017), 'Throughput optimization of TCP in cast congestion control in large-scale datacentre networks', Computer Networks the International Journal of Computer and Telecommunications Networking, Vol 124, pp 46.

The TCP/IP[293] allocates a unique IP address to every computer, which is connected to the internet using a modem through an ISP. This IP address helps the transfer of information, which is divided into small data packets (binary codes 1 or 0) and recombined at the destination, from one user to another[294]. This coding and decoding of information is done by the modem which stands for modulator and demodulator.

2.4.2.: Modem:

A modem is an integral part of the data transfer process because a computer uses digital data (binary: 0 or 1). When it is transferred through telephone wires, it can only travel in analogue or signal form[295]. All computer applications (email, www etc.) utilise TCP/IP. However, internal communication depends upon two main elements[296]:

1. Various sets of rules called protocols
2. A massive infrastructure of routers

The routers make it possible for the computers to communicate across the internet because they transmit signals to and from satellites[297]. If proper protocols are not followed then the communication through the internet is impossible[298]. The protocols are designed to allow various networks to communicate with each other[299]. For instance, consumers utilise the resources of Internet Service Providers (ISPs) whereas the providers interconnect with each other to provide services[300]. This whole mechanism allows information to be shared using the World Wide Web. After the technological

[293] Internet protocol (IP) delivers packets of data from the source host to the destination host solely based on the IP addresses contained in the packet headers.
[294] Srisuresh, P., & Egevang, K., (2000), 'Traditional IP network address translator', Traditional NAT, No RFC 3022.
[295] Held, G., (1994), 'The complete modem reference: The technician's guide to installation, testing, and trouble-free communications, (3rd Ed, Wiley ePub, US), pp 32.
[296] Reidenberg, J., (2005), 'Technology and Internet Jurisdiction', University of Pennsylvania Law Review, Vol 153.
[297] Vural, S., Wang, N., (2017), 'Caching transient data in internet content routers', IEEE/ACM Transactions on Networking (TON), Vol 25, Issue 2, pp 1048-1061; Carevic, M., & Cica, Z., (2009), 'FPGA implementation of IP packet segmentation and reassembly in internet router', Serbian Journal of Electrical Engineering, Vol 6, Issue 3, pp 399-407; Beheshti, N., Burmeister, E., (2010), 'Optical packet buffers for backbone internet routers', IEEE/ACM Transactions on Networking (TON), Vol 18, Issue 5, pp 1599-1609.
[298] Krol, E., (1992), 'The Whole Internet: Catalogue & User's Guide', O'Reilly & Associates, Inc.
[299] Eriksson, B., Sommers, J., & Nowak, R., (2011), 'Inferring Unseen Components of Internet Core', IEEE Journal on selected areas in communication Vol29, Issue 9, pp 1788-1798.
[300] Schiller, D., (2014), 'Rosa Luxemburg's Internet?', International Journal of Communication, Vol 8.

explanation of the technology to understand the WWW, the literature connects back with the subject matter of this research. It is the World-Wide-Web which remains uncontrolled[301] because any individual or institution can create a website with any number of documents and links.

2.4.3.: The 'World Wide Web' (the web)[302]:

In the 1990s the internet was described as "a grey and dreary place devoid of content – like a TV station without programs[303]". The web provided the desired multimedia interface in the mid-1990s. It allowed transmission of text, pictures, audio, and video collectively known as web pages[304]. It enlivened the internet with search functions that could retrieve information on any topic imaginable[305]. It was later transformed into a robust commons with the arrival of 'Netscape, Microsoft, AOL and Yahoo'; this commercialisation was later transformed into a content generating environment of social media.

The web's development, from information acquisition to content publishing, has involved the innovation of numerous communications platforms (social media such as emails, Facebook, LinkedIn, Twitter and Instagram)[306]. The blogs and video blogs such as YouTube and Snapchat are the latest additions, which are also available on smart devices (such as laptops, tablets, smartwatches and mobile phones) (see Appendix-VII). The openness allows individual users to become publishers of their content, much of it is autobiographical and revealing. That information is consumed and retransmitted by

[301] Albert, R., Jeong, H., & Barabasi, A. L., (1999), 'Internet: Diameter of the world-wide web', nature, Vol 401, Issue 6749, pp 130; this unregulated growth of WWW leads to a huge and complex web.

[302] It stores documents in such a way, on one computer connected to the Internet that a person using another computer connected to the Internet can request and receive a copy of these documents. The terms used to refer to the materials that are transmitted in this way are a 'web page'. The collection of web pages is called a 'web site'. A computer that makes documents available runs software that is referred to as a 'web server'; a computer that requests and receives documents runs software that is referred to as a 'web browser'.

[303] Zittrain, J., (2008), 'The future of the internet--and how to stop it' (1st Ed, Yale University Press, Edelman publisher), Ch. 2, pp 19.

[304] Lazar, J., (2002), 'The world wide web', The human-computer interaction handbook, L. Erlbaum Associates Inc., pp. 714-730.

[305] Lawrence, S., & Giles, C. L., (1998), 'Searching the world wide web', Science, Vol 280, issue 5360, pp 98-100.

[306] Arkowitz, J., Pearson, L., Benjamin, B., (2013), 'A Brand Owner's Guide to Social Media', Kilpatrick Townsend & Stockton LLP, Available online: http://kilpatricktownsend.com/~/media/Files/Publications/May%202013%20Brand%20Owners%20Guide.ashx [Assessed 1st August 2018].

third parties with little regard for the context in which it was created (see7.17). Smart devices make it simple to take photographs, tagged with names, and transmitted to third parties (many of them unknown to sender), creates high risks of reputational harm through embarrassment, shame, or the inability to stop an unfavourable image from viral distribution across cyberspace.

2.4.3.1.: The internet versus the web:

The web and the internet are two separate things: The internet is a networking infrastructure, which connects various devices globally and allows them to communicate with each other[307]. The Web is a method of accessing information using the medium of the internet. It is an information-retrieval model, built on the internet, which helps transmit data using Hypertext Transfer Protocol (HTTP) (see-2.4.1). Thereby, the web is simply a small portion of the internet[308]. The darknet or deep web is also a part of the web, which is hidden because it cannot be accessed using ordinary search engines[309]. Following from this, the internet is a medium to connect the networks; the web is the source, which helps to share information over that medium, whereas the darknet is also a part of the internet (a massive part 500 times bigger than the web) which is hidden from the surface[310].

2.4.3.2.: The relevance of technology:

The technological elements elaborated before may not be directly relevant to social media libel. This thesis analysed technology to comprehend:

1. Characteristics of social media communication (see Part-B)
2. Regulation of the Internet (see Part-C)
3. Technology regulation by filters

[307] Donald B., & Melissa B., (2014), 'Internet Research Illustrated' (Course Technology, Boston, USA), pp 18.
[308] Christopher, O., & Steve, B., (2015), 'Security and Cryptography on World Wide Web', International Journal of Computer Science and Information Security, Vol 13, Issue 9.
[309] Dubois, Y., (2014), 'Dancing in the dark: Galactic properties trace spin swings along the cosmic web', Monthly Notices of the Royal Astronomical Society, Vol 444, Issue 2, pp 1453-1468.
[310] The TOR Project (2016), How Big is The Dark Web, Available online: https://trac.torproject.org/projects/tor/wiki/doc/HowBigIsTheDarkWeb [Assessed 2nd August 2018].

For instance,'why can't authorities control the use of the internet technologically by developing protocols, which do not permit unauthorised access? The answer depends upon the functions of speed and time effectiveness. For example, if a mason builds a secure house which takes at least half an hour to get into and a half hour to get out of, after following all the security measures and protocols. This safe house may not serve the purpose of speed and accuracy. To compass the speed of the internet, a little security has to be compromised. Alternatively, internet users' conduct can be regulated to relax a few of the security options. For instance, China regulates online conduct by blocking international communication via Facebook[311].

Therefore, a balance between speed and security can be achieved by placing various regulations/restrictions on the use of online communication. For that cause, social media users have to decide whether they desire regulated cyberspace and regulated by whom[312].

2.5.: The regulation of the internet:

"Cyberspace presents something new for those of us who think about regulation and freedom. It demands a new understanding of how regulation works and of what regulates life there?" – Lawrence Lessig[313].

Social networks are regulated by the companies who own that network[314]. However, cyberspace is not owned by any single organisation[315]. Concerning its regulation, it is debatable whether there should be ownership of cyberspace. To date, it is not owned and considered as free space (as a whole); albeit, local companies own domestic networks. The main hurdle for internet regulation is that laws have been created on the assumption that activities are geographically bound (the Defamation Act 2013 is not applicable in Scotland even within the UK[316]). Contrariwise, location is still a criterion for assuming jurisdiction. Legislators are unable to accommodate social interactions

[311] Pham, S., & Riley, C., (2017), 'Banned! 11 things you won't find in China': Available online at: CNNTech.com. [Assessed 23rd May 2019]
[312] Lessig, L., (2000), 'Code: And other laws of cyberspace, version 2.0, pp 1-8.
[313] Lessig, L., (1999), 'Code and Other Laws of Cyberspace', (Routedge Publishers, London), pp 34.
[314] Facebook has its own policies and can suspend any account, which violate its policies.
[315] David, K. O., & Wueller, J. R., (2017), 'Fake News: A Legal Perspective, Journal of Internet Law, Vol 20, Issue 10, pp 6-13.
[316] *Kennedy v Aldington* [2005] CSOH 58 - the Claimant was time-barred in England but successfully pursued in Scotland. In Scotland, an action for defamation can be brought within a period of three years after the date of publication.

within their allocation rules based on location. Therefore, they will have to decide if they are willing to abandon the territorially based system of regulation[317].

Johnson and Post[318] argued that traditional laws should not govern the internet because these laws are based on territory, whereas cyberspace is a borderless space. It may be virtual[319], yet it involves cables, modems, satellites, computers and users (see-2.3). Therefore, regulations can be in the form of a legal constraint on any transaction (web – certain websites are illegal) or on those who carry out this transaction (users – hacking is illegal). The constraints are required to regulate transactions via the internet. From this perspective, the internet is already regulated because there are defamation laws, intellectual property laws, trademark rules, data privacy, pornography and obscenity regulations. These laws were created for 'offline activities' so they do not accommodate the purpose of online transactions' regulation.

2.5.1: The purpose of regulation:

It is important that internet regulation should address two components[320]:

1. The content that is transmitted
2. The infrastructure on which content is transmitted

However, when it comes to regulating certain transactions (defamation) involving foreign elements, the legislators are in an awkward position to regulate the internet see-7.23.2). They cannot give their laws exterritorial effects, so they create laws, which protect local users from international cyber-intruders (see-9.8). They also have the responsibility to create legislation to determine which transactions may contravene national laws. A simple solution could be to limit cyber-borders to geographical nationals (China[321] has blocked social media access for its citizens (see-1.2.1)). It may

[317] Kohl, U., (2000), 'Jurisdiction and the Internet: Regulatory Competence over online Activity', (2nd Ed, Cambridge Book Online), pp 3, 37.
[318] Johnson, D., & Post, D., (1996), 'Law and Borders - The Rise of Law in Cyberspace', Stanford Law Review, Vol 48, Issue 5, pp 1367-1402.
[319] Assange, J. (2012), Cypher-punks: Freedom and the future of the Internet (New York, NY OR Books)
[320] Goldsmith, J. L., (1998), 'Against cyber anarchy', The University of Chicago Law Review, Vol 65, Issue 4, pp 1199-1250.
[321] Newsbeat (2017), 'Social media and censorship in China': Available online at; http://www.bbc.co.uk/newsbeat/article/41398423/social-media-and-censorship-in-china-how-is-it-different-to-the-west [Assessed 14th March 2018].

protect the internal internet user; however, it may not serve the purpose of the web, data sharing, information retrieval and freedom of expression[322]. Even closing cyber-borders may also offend the online community as the nature of the internet is 'openness' because it has no borders[323]. This borderless characteristic of cyberspace implies: It is not always a question of controlling cyberspace but controlling individuals who use it[324].

2.5.1.1.: Regulating behaviour:

The traditional approaches ignore the nature of 'digital social community', where communication has different concepts because the pattern of the behaviour is divergent[325]. Social networking has modernised communication culture which allows users to acquire an altogether different online-personality (see-2.5.1.3). It inevitably affects forms of deviant behaviour that naturally arise to exploit new opportunities (see-2.1, 2.5, 5.6, 8.1.3.). The user's behaviour can be controlled by placing certain restrictions and raising awareness about what is a legitimate transaction[326]; and to what extent the user must be aware of cyberspace laws to abide by them[327]. It will not be so straightforward to regulate cyberspace by just enacting legislation, especially with the frequent use of social media by teens. Abusers always utilise loopholes in-laws: If law-making bodies cannot control the behaviour of cyber-users[328], then the hurdles of jurisdiction and proper law become meaningless[329].

Social media user's behaviour can be changed by limiting access to libellous material[330]. As in the *Licra* case[331], the French court ruled that the US-company must

[322] Tandon, R., (2011), 'Policing the Web: Free Speech under Attack?', Lawyers Update, online URL: http://lawyersupdate.co.in/LU/7/65.asp [Assessed 11th June 2018].
[323] Edwards, L and Waelde, C., (1997), 'Law & the Internet: Regulating Cyberspace ', (Hart Publication, Oxford) Page 24.
[324] Reed, S., (2012), 'Making Laws for Cyberspace', (1st Ed, Oxford University Press, UK), pp 53.
[325] Basu, S., & Jones, R., (2007), 'Regulating cyberstalking', Journal of information Law and Technology, Vol 2, Issue 1, pp 1-30.
[326] Kashyap, A., (2016), 'Defamation in Internet Age: Law & Issues in India', International Journal for Innovations in Engineering, Management & Technology, Vol 1, Issue 1, pp 17-25.
[327] Bing, Bygrave & John, (2009), 'Internet Governance: Infrastructure and Institutions', (1st Ed, Oxford University Press, UK), pp 33, 47, 91.
[328] Reveng porn is illegal; however, there is no awareness to either control it or stop it altogether.
[329] Johnson, D. & Post, D. (1996), 'Law and Borders: The Rise of Law in cyberspace', Stanford Law Review, Vol 1367, pp 46-48.
[330] Callamard, A., (2017), 'Are courts re-inventing internet regulation?', International Review of Law, Computers & Technology, Vol 31, Issue 3, pp 323.
[331] *LICRA v Yahoo* [2001] 145 F. Supp. 2d 1168.

ensure that French residents could not access content on their site that violated French laws (see-7.9.2). This can be done with the help of service providers but they are not under any government regulation (see-2.4.3.1). In addition, it will raise privacy concerns whether the third party (content-provider) is entitled to choose the content to block (this is outside the scope of this research).

This thesis does not provide a detailed analysis of the status of internet governance, although its consideration is important to an understanding of the complexity of internet-regulation. Online communication is crucial to our knowledge-based economy. Therefore, there is a need to preserve its operation through which we see our political, social and economic freedoms[332]. Social communication can be explored by analysing the core characteristics of the internet which will evaluate if traditional laws apply to internet conduct.

2.5.1.1: The characteristics of the internet:

Justice Faieta[333] described online communication as instantaneous, seamless, interactive, blunt, borderless and far-reaching. Along with its absolute and immediate worldwide ubiquity and accessibility, it is also impersonal[334]. However, it is its anonymous nature of transactions which create a greater risk that the defamatory remarks are believed[335]. However, it uses protocols to transmit and retrieve information in the form of data packets (see-2.4.2). Each packet travels through network layers. It passes through a series of specialised 'routers', which determine its direct path from sender to receiver. Routers also make a copy (for a fraction of a second) of each packet to read and direct it (see-2.4.2). During information search, a user enters words into a search engine (Google, Firefox or Yahoo). Every ISP has an allocated website with a domain name; it serves as the entry point to information stored on Google as contained on the WWW (see-2.4.3.1).

[332] Savin, A., (2014), 'How Europe formulates internet policy, 3 Internet Policy Review; Available online, http://policyreview.info/articles/analysis/how-europe-formulates-internet-policy [Assessed 23rd Jan 2018].
[333] *Hardev Kumar v Vinod Khurana* [2015] ONSC 7858.
[334] *Barrick Gold Corporation v Lopehandia* [2004] 71 O.R. (3d) 416 (C.A.).
[335] David & Post, (2014), Characteristics of the Internet, Defamation and Cyber libel barrister, Chapter 5, Available online at http://www.cyberlibel.com/?p=1132 [Assessed 27th June 2018].

The domain name[336] is an alias for a number which is what the computer uses to find the location of the website. Once the website has a domain name, it becomes accessible by any user on the web. In theory, search results are non-discriminatory: Any user should be able to enter the domain name above, type in a search word or phrase, and receives the same search listings in the same order as any other user who enters those search words[337]. For instance, a terrorist in the caves of Afghanistan, a businessman in London and a researcher in Australia, all have access to the same data online. Other than a domain name, the internet has many other characteristics, but a few areas that are relevant in social media defamation proceedings are[338]:

1. It's global nature
2. Interactivity
3. It can shift the balance of power in the offline world
4. Accessibility
5. Anonymity
6. Its facilitation of republication
7. The prominence of intermediaries
8. Its reliance on hyperlinks/hypertext
9. Its long-term impact — the use of permanent archives
10. Its multimedia character
11. Its temporal indeterminacy

[336] Domain names are used to identify one or more IP addresses i.e. they allow URLs to identify particular Web pages. For instance, in the URL http://www.bradford.ac.uk, the domain name is Bradford.ac.

[337] The Internet does not require proprietary software for access. Any software platform (including Windows, Macintosh and UNIX) that can 'understand' Internet protocols can establish a connection to the Internet.

[338] Cheng, X., Liu, J., & Dale, C., (2013), 'Understanding the characteristics of internet short video sharing: A youtube-based measurement study', IEEE Transactions on Multimedia, Vol 15, Issue 5, pp 1184-1194; Haloush, H. A., & Malkawi, B. H., (2008), 'Internet characteristics and online alternative dispute resolution', Harv. Negot. L. Rev., Vol 13, pp 327.

2.5.1.3.: Temporal Indeterminacy:

The temporal indeterminacy of the internet relates to its unique characteristics of anonymity in space and time; absence of geographical borders; the capability to throw surprises with rapidity and its potential to compromise assets in the virtual and real world[339]. In cyberspace, anonymous transaction has become commonplace (see-2.10.2). Anonymity allows users to achieve the benefits of social networking and maintain their privacy. For instance, hiding identity may help those who live in countries where freedom of speech is not widely upheld[340]. It provides an open forum to communicate and inform others without danger to themselves.

On another note, a terrorist may be communicating with his organisation while hiding his online identity[341]. For example, ISIS and Al-Qaeda were able to recruit teens via social networks (see-2.1). The question arises: Is anonymity in cyberspace a norm or a deviation? In social communication, knowing the identity of other users is essential for understanding and evaluating interaction. In the physical world, the norm is one body one identity. It is different in the virtual world because it consists of information rather than matter[342]. Therefore, in cyberspace a single person can create multiple electronic identities with distinct characteristics and qualities[343]. It gives online users a false sense of security that they are no longer accountable for their publication because they could hinder accountability (see-7.5). It allows them to publish fake content without any sound proof or research and without taking the outcome into perspective (see-8.2.2).

[339] Dyreson, C. E., & Snodgrass, R. T., (1995), 'Temporal indeterminacy', in Snodgrass R.T., (eds) The TSQL2 Temporal Query Language (1st Ed, The Springer International Series, Boston), pp 327-346.
[340] Danyal, S., (2015), 'Internet anonymity in India encourages trolls – but it's also necessary'; https://scroll.in/article/734716/internet-anonymity-in-india-encourages-trolls-but-its-also-necessary [Assessed 18th August 2018].
[341] Jenkin, S., (2018), 'Online anonymity has turned a global village into a lynch mob'; https://www.theguardian.com/commentisfree/2018/apr/20/anonymity-social-media-labour-antisemitic-abuse [Assessed 18th August 2018].
[342] In real world, parents tell their children not to talk to strangers, but the whole point of cyberspace networking is to talk to strangers.
[343] A student can become a director of a company; a man creates a female identity. These fake personalities allow them to develop relationships with the ostensible female, relationships based on deep-seated assumptions about gender and their own sexuality; Mnookin, J., (1996), 'Virtual(ly) Law: Emergence of law on LambdMOO', Journal of Computer-Mediated Communication, Vol 2, Issue 1.

These characteristics of the internet attract the attention of wrongdoers who misbehave during cyberspace communication[344]. In the physical world, 'face to face communication', inappropriate behaviour would bring about retaliation. The key concepts of social interaction and social communication differ in cyberspace from the real world. Such differences should influence the debate about the nature and form of cyberspace regulation. The above analysis is essential to understanding the regulation of the internet and the applicability of traditional laws. The traditional laws of the physical world face challenges to their application to conduct in cyberspace due to issues of sovereignty, jurisdiction, trans-national investigation and extra-territorial evidence. However, before applying existing jurisdictional rules to cyberspace conduct and its users' behaviour, it is salutary to understand who owns it.

2.6.: Ownership of cyberspace:

Cyberspace may have little substance of its own but have tremendous influence by way of its users[345]. To apply traditional laws in cyberspace, it is important to understand that it has formed its community – the society of net[346] (see-2.1). Unlike individual computers, which individually owned, virtual space itself has no owner[347]. There is no single country, which controls activities carried out in cyberspace. However, its parts are regulated by domestic legislation, whereas, various institutions share ownership of the local internet [348] but cyberspace as space is not owned (see-2.3). Within a particular geographical area, a firm, a corporation, The Internet Corporation for Assigned Names and Numbers (ICANN), Inter Network Interface Card (NIC) or Internet Service Providers (ISPs), have always owned the discrete internet connection[349]. It is a widely distributed network without a central regulating authority.

[344] Mittal, S., & Sharma, P., (2017), 'Enough law of horses & elephants debated…, Let's discuss the cyber law seriously', International Journal of Advanced Research in Computer Science, Vol 8, Issue 5.
[345] For a researcher it is a place for information, for hackers it's a place for stealing, for dark web users it is a place of crime; Meder, J. W., (1997), 'A visit to the cyberspace mall: Who owns a web site address?', Duquesne Law Review, Vol 35, Issue 4, pp 989.
[346] Jurczak, F. A., & Kowalski, M., (2010), 'Create their own space in cyberspace', Journal of Technology & Information, Vol 2, Issue 3, pp 12-16.
[347] *Ebay v Bidders Edge* [2000] 100 F. Supp. 2d 1058; *America Online v LCGM* [1998] Civ. Act. No. 98-102-A; *Shetland Times v Wills* [1997] FSR 604; owners of internet resources consider their website or e-mail address as their own little 'claim' in cyberspace.
[348] Stromdale, S., (2005), 'Finders Keepers: Who should Run the Internet', Electronic Business Law, Issue 10.
[349] Strickland, J., (2010), 'Who owns the Internet?', How Stuff Works; Blog online Url: http://computer.howstuffworks.com/internet/basics/who-owns-internet.htm [14th January 2018].

2.6.1: Ownership versus subscription:

There are some information providers (Microsoft, eBay, Amazon, Lawtell, Westlaw, online gaming etc.) who, irrespective of jurisdictional boundaries, regulate their websites by charging a subscription fee[350]. The subscribers pay a fee to use these resources and agree to follow their terms and conditions of use[351]. Their subscription may be cancelled if they violate their usage terms. Therefore, the users of such websites can effortlessly be located/identified/traced because they have to upload their profile/location/payment info before utilising these resources[352]. In the event of defamation, these users may be subject to a different set of laws because cause of action arises when the material is downloaded (see-7.18). Whereas, with paid subscription it varies, as in the Raphael[353] case, the court held that the cause of action arose at the time of the creation of the fake Facebook account (see-7.11). However, there are differences in social communication sites and social trading sites because the purpose of creating a profile is altogether different.

2.6.1.1.: Ownership: Net-neutrality or free speech:

Network neutrality defines that the network operators cannot unreasonably discriminate between the data carried across their networks (see-1.10). It is the fundamental principle to create the internet, which binds the data-providers not to discriminate between various types of data and reinforces the concept of freedom[354]. Without net neutrality, intermediaries and carriers can select which traffic they carry, or charge more for separate streams, or bundle packages of pre-determined content[355].

The idea of 'net neutrality' makes censorship a difficult task. It is the most required concept of this century. Otherwise, the powerful content providers can dominate the

[350] Biegel, S., (2001), 'Beyond Our Control?', (1st Ed, The MIT Press, London), Ch. 1.
[351] The application of libel rules may vary for paid subscribers because their source of information is at the point of payment. Similarly the cause of action may also be same for all subscribers.
[352] David, K. O., & Wueller, J. R., (2017), 'Fake News: A Legal Perspective, Journal of Internet Law, Vol 20, Issue 10, pp 6-13.
[353] *Applause Store Productions Ltd and Firsht v Grant Raphael* [2008] EWHC 1781 (QB).
[354] Economides, N., & Tag, J., (2012), 'Network neutrality on the Internet: A two-sided market analysis', Information Economics and Policy, Vol 24, Issue 2, pp 91-104.
[355] Sidak, J. G., (2006), 'A Consumer-Welfare Approach to Network Neutrality Regulation of the Internet', Journal of Competition Law & Economics, Vol 2, Issue 3, pp 349-474.

internet at the expense of smaller companies[356]. This could severely damage innovation and potentially freedom of speech online and proving that the rich can exploit loopholes for their own benefits (see-1.8.1). They can monopolies and lobby to defend their interests or to directly fund personal campaigns[357].

2.6.2.: Sovereignty in cyberspace:

'The Internet is not only large, it is sublimely large; in comparison with it, all other human activity is small' - James[358].

Sovereign states have their own regulations and no country permits a breach of its sovereignty[359]. A country's sovereignty is the foundation of the concept of jurisdiction[360] because every independent state is responsible for the safety of its residents. Similarly, the power of any legal authority is restricted by the territorial limits of its country[361]. If a legal authority exercises its power beyond its territorial limits, it is considered an illegitimate assumption of power (see-6.2.3). That's why jurisdictional rules are most often unilateral because a legal authority can only decide whether or not it has jurisdiction but cannot determine whether other forum courts have the power[362]. For instance, the US could not force an English court to sentence Gary McKinnon to 70 years[363].

2.6.3.: English court's approach:

Cyberspace may not be regulated but its use can be subject to agreements[364]. The law can control the use that human beings put it to[365] however, that regulation will only be

[356] Cheng, H. K., Bandyopadhyay, S., & Guo, H., (2011), 'The debate on net neutrality: A policy perspective', Information systems research, Vol 22, Issue 1, pp 60-82.
[357] Google, Facebook, eBay, Amazon and Internet sector spent $1.2 billion on lobbying and campaigning against television, movie and music industries. Online Url: http://craigeisele.wordpress.com/2012/01/22/who-is-fundingthe-sopa-and-pipa-debate/ [Assessed 18th May 2018].
[358] Grimmelmann, J., (2010), 'The Internet is a Semi commons', Fordham L Rev 2799, Vol 78.
[359] Schmitt, M. N., & Vihul, L., (2017), 'Respect for sovereignty in cyberspace', Texas Law Review, Vol 95, Issue 7, pp 1639-1670.
[360] Boyle, J., (1997), 'Foucault in Cyberspace: Surveillance, Sovereignty and Hardwired Censors', University of Cincinnati Law Review, Vol 66, pp 177-205.
[361] McArdle, D., (2008), 'Computer crime: Computers – hacking – extradition –abuse of process, Scottish Legal Action Group Journal, Vol 367, pp 130.
[362] Kruger, T., (2010), 'Civil Jurisdiction Rules and their Impact on Third States', (Oxford University Press, UK), Chapter 4.
[363] *McKinnon v Government of the USA* [2008] UKHL 59.
[364] Rosenne, S., (2003), 'The Perplexities of Modern International Law', Private International Law, RCADI Tom III, pp 20-29.

valid within certain sovereign territories. English approach is based on physical presence which provides the base for the assumption of personal jurisdiction (see-2.3.1, 4.5.2, 6.9). British judges give regard to the due process of assuming jurisdiction in 'ordinary defamation' cases. The judgment depends upon courts' understanding of this digital realm of social communication.

2.6.4.: Court's skills:

Courts have to avoid undue enforcement on the jurisdiction of other foreign nations[366]. British courts exercise moderation in assuming jurisdiction over non-resident defendants by following the CPR. However, different sets of skills required to interpret social media communication. Non-governmental organizations and cyber activists claim that courts are not trained to cope with technology[367]. Judges have been reluctant to rule over a trans-border, international medium of communication they did not understand, and over an area of law involving several jurisdictions for which they had not been trained at all[368]. These cyberspace-territoriality violations can disturb international order and produce legal, economic and political reprisals. However, international law allows courts to extend their jurisdiction (universal jurisdiction) in certain matters.

2.7.: Jurisdiction in international law:

International courts have the authority, in certain circumstances, to extend jurisdiction beyond the sovereign state (see-6.4). Jurisdiction in international law is a wider concept: It refers to the power of a court to regulate conduct in matters not exclusively of domestic concern[369]. In domestic law, jurisdiction is limited to geographical boundaries.

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[365] The Internet Aids in Detecting Violations & business online Url: https://www.coursehero.com/file/p1o0kah/3-The-Internet-Aids-In-Detecting-Violati [Assessed 28th September 2018].

[366] Chapelle, B., & Fehlinger, P., (2016), 'Jurisdiction on the Internet: From Legal Arms Race to Transnational Cooperation', Global Communication on Internet Governance, Chatham House, Paper series no 28.

[367] Freeman, L., (2003), 'Mobilizing and demobilizing the Japanese public sphere: Mass media and the Internet in Japan', The state of civil society in Japan, pp 381-411; Barger, C. M., (2002), 'On the internet, nobody knows you're judge: Appellate courts' use of internet materials', Journal of Appellate Practice and Process Vol 4, Issue 2, pp 417-450.

[368] Callamard, A., (2017), 'Are courts re-inventing internet regulation?, International Review of Law, Computers & Technology, Vol 31, Issue 3, pp 323.

[369] Kuner, C., (2010), 'Data Protection Law and Internet Jurisdiction on Internet (Part 1), International Journal of Law and Information Technology, Vol 2, Issue 18, pp 176-193.

The courts follow the rules and principles that determine the circumstances under which a court is entitled to adjudicate and render a substantive judgment concerning the international and interstate connections involved. For instance, EU directives defined specific rules to regulate jurisdiction involving EU nationals. These can only be applied within the EU and may not be applied in the UK after Brexit in 2019 (see-2.7.2).

2.7.1.: Jurisdiction in the EU:

"Persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State – Art 2[370]".

EU rules originate from its member's treaties which are enacted by the Parliament and Council of the EU. The European Court of Justice (ECJ) has legislative control and interprets the laws. However, the courts of the member state have to choose from the following jurisdictional regulations: (1) National laws and (2) European laws[371]. National law jurisdiction is often contained in various civil/criminal procedure rules (common law countries) and administrative procedure codes (civil law countries[372]).

The most relevant EU legislation for this thesis, along with Brussels I Regulation is:

1. For Jurisdiction - Article 5 (3), "A person domiciled in a Member State may, in another Member State, be sued: In matters relating to tort, delict, or quasi-delict, in the courts of the place, where the harmful event occurred or may occur"[373]
2. For social media - Article 23 (2), "a durable recorded agreement shall be equivalent to writing[374]
3. For choice of law cases - Regulation (EC) 864/2007 of the European Parliament and Council on Non-contractual Obligations in Civil and Commercial Matters

The European Commission policy document of 2014 on internet governance highlighted tensions between the cross-border internet and national internet

[370] Article 2(1) of the Brussels I Regulation, Report Jenard, OJ [1979], C-59/18 - the "principle of equality of treatment".
[371] Dinan, D., (2006), 'Origins and Evolution of the European Union', (1st Ed, Oxford University Press, Oxford), pp 110, 155, 174.
[372] Civil Law countries Jurisdiction is not based on due process (Australia) or minimal contact rules (US).
[373] The ECJ interpreted the scope of Article 5(3) in *eDate Advertising GmbH v X* (C-509/09); & *Olivier Martinez and Robert Martinez v MGN Limited* (C-161/10) cases in 2011.
[374] Wang, F. F., (2008), 'Obstacles and Solutions to Internet Jurisdiction: A Comparative Analysis of the EU and US Laws, Journal of International Commercial Law and Technology, Vol 3, Issue 4, pp 233-241.

jurisdictions. EU parliament introduced 'Data Protection Regulation 2014', which can be applied extraterritorially regardless of the jurisdiction in which European personal data is processed[375]. There is still confusion in the application of both sets of rules. The Brussels Convention provides jurisdiction in civil and commercial matters in a general way[376]: A national domiciled in a member state will be sued in that state. However, if the claim involves harm/injury to reputation, he will be sued in the place where the harm took place.

This convention[377] tried to make jurisdiction more predictable by allowing the court to decide wherever the claim is brought forward. However, it is only available to EU citizens and this convention also allows claimants to choose to sue in their domicile-state or other jurisdiction[378]. It is also in contradiction to Article 4[379] because if a person is not domiciled in a member state, it can apply national laws rather than EU laws. Therefore, EU nationals can only be sued in the member state where they are domiciled. These rules are based on forum conveniens, which is applied differently in England[380] (see-2.17.1).

2.7.2.: Jurisdiction: England versus EU:

s often use English courts to resolve libel cases, even when neither party is based in England[381] (see-2.17). It depends on the party's choice, which is granted under Article 6 of the Human Rights Act 1998 (see-6.8). If a claim is registered in England, the courts must have personal jurisdiction to proceed in accordance with CPR and applicable

[375] European Commission, (2014), Communication on Internet Policy and Governance; Available at: http://ec.europa.eu/digital-agenda/en/news/communication-internet-policy-and-governance [Assessed 26th November 2017].
[376] Brussels Convention of 27 September 1968, on jurisdiction and the enforcement of judgments in civil and commercial matters OJ L 299/32
[377] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters OJ L 12/1.
[378] Stone, P., (2008), 'EU Private International Law: Harmonization of Laws', (2nd Ed, Edward Elgar Publishing, Cheltenham), pp 46, 198.
[379] Article 4(1), Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, Brussels Regulation (2000) OJ C 160/41- If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Art 22 and 23, be determined by the law of that Member State.
[380] Forum non-conveniens is not a valid argument in the EU; Article 5 of the Brussels Regulation states that the court which seized jurisdiction first, it must not decline its jurisdiction.
[381] *Sloutsker v Romanova* [2015] EWHC 2053 (QB); both the claimant and the defendant were foreign nationals.

law[382]. An English court has to decline its jurisdiction if England is not a proper forum even if the defendant is domiciled in England (see-6.6.2). If an English court has jurisdiction, it does not mean that it must exercise it if another appropriate forum exists[383]. This is in contrast to the Brussels Regulation.

A court should not decline its jurisdiction on the grounds of forum non-conveniens, if the defendant is domiciled in the EU[384] (see-6.7.1). Under Article 27 (2) Brussels I if the jurisdiction of the first court is established, then the second court shall decline jurisdiction in favour of that court. Whereas, in England it depends on the convenient forum as court assumed jurisdiction over the foreign defendant in the *Google* [2015][385] case because England was the convenient forum (see-2.17.1). In short, the mechanism of exercising jurisdiction in England is different as compared to EU regulations.

2.7.3.: Jurisdiction in England:

In traditional English private international law, the claimant has to persuade the court that service of the writ on the foreign defendant should be granted[386]. The conditions set in the *Spiliada* case[387] must be submitted to the judge with suitable evidence (see-6.9.1). This evidence can be presented to the court either on paper or at a hearing to which the defendant is not invited. English law allows a defendant to contest the court's jurisdiction; however, the defendant's chance to argue arises after service has been affected[388]. Concerning defamation, the focus is on the harm suffered[389] so 'forum non-conveniens' principle will be connected to:

[382] Trachtman, J. P., (2001), 'Economic Analysis of Perspective Jurisdiction and Choice of Law'; Available at SSRN: http://ssrn.com/abstract=258183 [2nd August 2017].
[383] *Voth v Manildra Flour Mills P Ltd* [1990] 171 CLR 538.
[384] Guillermo, W., (2015), 'Rules for Offline and Online in Determining Internet Jurisdiction: Global Overview & Colombian cases, International Law Journal, Vol 26, pp 13-62.
[385] *Judith Vidal-Hall, Robert Hann & Marc Bradshaw & Information Commissioner v Google Inc* [2015] EWCA Civ 311.
[386] If the claim concerns defamation, permission to serve may be given by the court if the damage or loss was sustained within England or resulted from an act committed within England or Wales.
[387] *Spiliada Maritime Corp v Cansulex Ltd* [1987] HL.
[388] Fawcett, J. and Carruthers, J.M., (2008), 'Cheshire, North and Fawcett in Private International Law' (14th Ed, Oxford University Press, Oxford), pp 235, 275.
[389] The nature of defamation is less jurisdictionally constrained than some other causes of action involving the publishing of information, due to its strong focus on damage suffered by the plaintiff rather than on the behaviour of the defendant.

1. The place of publication or
2. The place of injury

Once jurisdiction is established, the courts have to resolve the issue of choice of law[390]. The default choice of law rules are based on "*lex loci delictii commissii*" (the law of the place where the tort is committed)[391], which is applied as governing law and limitation periods and damages are considered as substantive matters (see-2.11.6). In social media, the tort of defamation can be committed in several places because the place of downloading is ordinarily the place where online defamation occurs (there is a difference in reading online and downloading; this thesis is concerned with the accessibility of online material in any form). This may raise questions regarding the extent to which a publisher can practically comply with the defamation laws of various states in the case of multi-jurisdictional publications[392]. Arguably, the law of the place where the protection is claimed[394] or reputation vindicated[395] may be the natural forum for the choice of law rules because it is the place where the claimant resides and has a reputation to protect[396].

There is another issue of publication because the tort of defamation is not complete until publication (see-2.13). Publication occurs where it is received, downloaded from the internet, or read online. It may only be materialised if it is brought to the notice of the third party and the claimant has the burden to prove that it is accessible to other users (see-5.5.3). It can also be shown by circumstantial evidence (online live stats are available). However, finding available evidence is not as easy in online disputes compared to offline disputes (see-7.7).

[390] Choice of law rules are used to resolve the question of which laws should apply to proceedings that have connections with more than one state or country.
[391] *Black v Breeden* [2010] ONCA 547.
[392] Roilliard, B., (2007) 'Jurisdiction and choice of law rules for defamation actions in Australia following the Gutnick case and the Uniform Defamation Legislation', Austl. Int'l LJ, Vol 14, pp 185.
[394] *Young v New Haven Advocate* [2002] 315 F.3d 256, at 262-63; *Van Breda v Village Resorts Limited* [2010] 98 O.R. (3d) 721 (C.A.).
[395] Geist, M., (2001), 'Is There a There There?: Toward Greater Certainty for Internet Jurisdiction', Berkeley Tec. L.J., Vol 16, pp 1345, at 1380.
[396] Brown, R., (1999), 'The Law of Defamation' [2nd Ed, Palgrave, Canada], pp 7-59, 7-60 and 7-113.

2.8.: Jurisdiction for offline disputes:

Jurisdiction for offline disputes can be assumed by applying public international law or private international law rules. The application of the relevant rules depends upon the nature of the transaction. The most important international instruments relevant to this thesis are the Hague Conference on Private International Law and the United Nations Convention on the Use of Electronic Communications and Convention on Choice of Court Agreements.

2.8.1.: Public international law:

Jurisdiction rules of public international law are derived from international conventions and international treaties. Public jurisdiction law mostly focuses on criminal matters between the states parties. It firmly regards 'the non-intervention principle', which appeared from the accepted idea of sovereign equality of states[397] (see-1.1). The idea of territory limits states' ability in determining jurisdiction to execute judgments over persons or things[398]. This is called the territoriality principle of law (see-6.4).

2.8.2.: Private International Law:

In contrast to disputes between states, private international law regulates international disputes among persons[399], for instance, disputes involving commerce, contracts, or defamation. Thus, determining jurisdiction becomes crucial, even for civil issues. Private international law is also used in continental Europe; however, it is also named conflict of laws in the US, Canada and England. In different countries, different connecting factors are used for jurisdiction and applicable law. For instance, *Lex Fori* is used in England. The states, which follow Roman civil law system, use "*actor sequitur forum rei*[400]" and "*lex loci delicti commissi*[401]".

[397] Ambos, K., (2004), 'The Fundamentals of Ius Puniendi National' In Particular, Your Application Extraterritorial, Vol 51, pp 225-254.
[398] Guillermo, W., (2015), 'Rules for Offline & Online in Determining Internet Jurisdiction: Global Overview & Colombian cases, International Law Journal, Vol 26, pp 13-62.
[399] Wang, F., (2010), 'Internet Jurisdiction & Choice of Law: Legal Practices in the EU, US and China' (1st Ed, Cambridge University Press, NY), pp 7, 21, 33.
[400] The claimant should follow the forum of the property in suit, or the forum of the defendant's residence.
[401] The law of the place where the tort, offense or injury was committed.

2.9.: Jurisdiction for online disputes:

"The illusion of an International law term 'no-man's land', should be changed in cyberspace by a realistic term 'every-man's land'[402]".

Online jurisdiction may be extended over everybody, everywhere, especially in social media libel. Physical borders can no longer operate as 'signpost' to online users so they remain unaware of the existence of any borders in cyberspace.

The assumption of jurisdiction for cyberspace transaction becomes crucial. Its importance can be understood that to implement 'municipal-laws' in cyberspace, jurisdiction is the first step[403]. Jurisdiction deals with territory therefore anything which happened on the internet must be linked to the country whose court is assuming jurisdiction[404]. Precisely, the internet transaction must be linked to the claimant, the defendant, or the particular state where the claim is filed[405]. Interestingly, if this approach is extended then any social media defendant must be sued at his place of domicile, which reduces the uncertainty of jurisdiction and applicable law.

In England, there is a 'double action-ability' principle that was established in the *Shevill*[406] case. The claimant can choose to sue at the place of distribution or where the loss of reputation occurred but only for the reputation lost in that jurisdiction. As discussed earlier, application of laws is limited to territory, even in cyberspace cases. This provides legislators with the option of 'harmonisation[407]' but that requires every state to accept the same standards by compromising their national laws. This harmonisation may only work in the presence of an international standard code[408].

[402] Svantesson, D., (2017), 'Private International Law and the Internet', (3rd Ed, Kluwer Law International), pp 7.
[403] Law can only be applied if a decision on jurisdiction is already made; Mills, A., (2014), 'Rethinking Jurisdiction in International Law', British Yearbook of International Law, Vol 84, Issue 1, pp 187-239.
[404] *Ryanair Ltd v Fleming* [2016] IECA 265; the court was not satisfied that any of the participants actually accessed online post. It refused jurisdiction in absence of any connection between jurisdiction and the litigants.
[405] Lodder, A. R., (2013), 'Ten Commandments of Internet Law Revisited: Basic Principles for Internet Lawyers, Information & Communications Technology Law, Vol 22, Issue 3, pp 264-276.
[406] *Shevill v Press Alliance SA* [1996] HL 26; in this libel case against a French paper the circulation in England was very small. However, it established that if a court has jurisdiction over a foreign publisher it should award damages only for the harm suffered within the UK.
[407] It will than become easy to determine which rule regulate a particular dispute, rather than deciding which state's law apply.
[408] Lessig, L. (1999), 'Code and other Laws of Cyberspace' (Basic Books Publication, New-York), pp 118

2.9.1.: Controversy surrounding online jurisdiction:

Is there a need for specific internet laws or are traditional rules sufficiently well defined? Cyberspace is different from traditional media because of the speed of communication and nature of transmission. Therefore, it should have its laws to solve the problem traditional approaches cannot[409]. Especially, when states have contrasting approaches to determine and resolve defamation issues. This clash of defamation laws between jurisdictions reflects different cultural values in relation to freedom of speech[410].

Cyberspace transforms domestic users into global users and allows them to propagate unrestrained by physical space, time, borders or jurisdiction[411]. On the other hand, the traditional concept of jurisdiction is based on the idea that "The law is made for a definite group of people residing in a certain territory. Legal rights and responsibilities are therefore largely dependent on where one is located[412]". Unless this issue of domestic applicability is resolved, physical presence, court competence and jurisdictional problems will continue to cause hurdles to the delivery of justice in online disputes[413].

2.9.2.: Alternative approaches:

The following approaches regarding jurisdiction on the internet can be applied:

1. Traditional rules about personal jurisdiction apply to cyberspace transactions in the same way as they are applied to physical transactions. It was assumed that traditional approach would be sufficient enough to avoid legal anomie in cyberspace (see-7.8).

[409] Cyberspace is a 'parallel universe', in which websites, email, chat rooms and social media. communication effectively link individuals who have similar interests, regardless of their location or national origin.
[410] Collins, M., (2001), 'The law of defamation and the Internet', (Oxford: Oxford University Press), pp 21.
[411] Drissel, D., (2006), 'Internet Governance in a Multipolar World: Challenging American Hegemony', Cambridge Review of International Affairs, Vol 19, Issue 1, pp 105 -121; the geographic indeterminacy of cyberspace allows companies to collect online data in one jurisdiction and share with those in another. This multinational sourcing of personal data leads to conflicting national positions over appropriate regulatory controls.
[412] Raut, B., (2004), 'Judicial Jurisdiction in the Transnational Cyberspace', (1st Ed, New Era Law Publication, New Delhi), pp 7 – 11.
[413] Burk, D. L., (1997), 'Jurisdiction in a World without Borders', VA JL & Tech, Vol 1, issue 1.

Many legal professionals[414] believe that new jurisdictional rules are required for cyberspace transactions. They argue that traditional jurisdictional rules based on geographic location are not transferable to the transnational Internet[415] (see-7.8.1).

2. Scholars from the 1990s[416] reflected that cyberspace is a distinct place. It is separate from the physical world. It provides an "alternative to the difficult and dangerous conditions of contemporary social reality" so it should develop without any regulations[417].

Arguably, social media facilitates communication of real users based in a real place therefore the new regulation is out of context (see-2.3). Conversely, pre-internet, the effect of a defamatory statement was generally limited to a defined audience (the readership of a local newspaper or the viewers of a local broadcast). Therefore, any action of libel would still be limited to local jurisdiction. However, in social media communication, a defamatory statement can be instantaneously available throughout the world i.e. jurisdiction can be available anywhere social networks can be accessed[418]. This transnational feature of social media may be very significant in deciding defamation cases because it transforms 'local matter' into a transnational matter. The question arises in a situation when both publisher and victim are within one state[419] (social media does not necessarily transform in this case). It can only be evaluated properly by explaining the nature of communication in cyberspace.

[414] Allan Stein, Chris Reed, David Johnson, David Post, Jack Goldsmith, Lawrence Lessig, Longworth Elizabeth, Lorna E. Gillies, Michael Saadat, Patti Waldmeir, RSusan Brenner, Tricia Leigh Gray, Uta Kohl [it is detailed at 7.8.3 and 7.9.1]

[415] Kohl, U., (2010), 'Jurisdiction and the Internet Regulatory Competence over online Activity', (2nd Ed, Cambridge Book Online, Cambridge), pp 11.

[416] A detailed analysis is conducted at 7.8.3 and 7.9.1 e.g. Johnson & Post, 1997; Rheingold, 1998; Stone, 1991.

[417] Robins, K., (2000), 'Cyberspace and the world we live in. In D. Bell & B.M. Kennedy (Eds.), The cyber cultures reader', (1st Ed, Routledge Publishers, London), pp 77-95.

[418] Fitzgerald, B., (2003), 'Dow Jones & Co Inc v Gutnick: Negotiating 'American legal hegemony' in the transnational world of cyberspace', Melbourne University Law Review, Vol 27, Issue 2, pp 590-611.

[419] *Rindos v Hardwick* [1994] WASC; this case involved bulletin board messaging, the claimant, defendant and the server hosting the offending material were all located in Western Australia, which negated jurisdiction problem.

Chapter 2

Part B

Nature of Cyberspace Communication

Lord Best[420] asserted that what is criminal off-line is also criminal online but the inclination towards technology has also created unparalleled opportunities for the cyber-wrongdoers that were not even imaginable a few years ago. There is no mechanism in place to draw a line between legal, illegal or criminal information. To resolve the issue of improper use of public electronic communications, the Communication Act 2003 was introduced which repealed the Telecommunications Act 1984. It ensures that criminal offences committed using social media would be adequately prosecuted but it does not clarify when an indecent communication should be subject to prosecution, other than clear instances of bullying, threats, menace or harassment. A clear-cut online communication standard is required to protect freedom of speech[421] because it differs from traditional methods of communication. The freedom of speech is subject to national limitations because it is not an absolute right[422]. However, the digital reality of cyberspace has further affected the exercise and the judicial protection of freedom of expression in a comparative perspective[423] (see-7.21).

2.10.: Traditional versus cyberspace conflicts:

Traditional media publication was transitory. Pre-internet published newspapers could only be found in libraries and old broadcast were not available after they had been made. Besides, civil law heavily constrained traditional media in what they publish. Traditional publishers employed in-house lawyers for legal checks to avoid legal accountability. The realm of free communication gave a false sense of freedom, which

[420] HL (2014), Social Media and Criminal Offences Inquiry, Select Committee on Communication, http://www.parliament.uk/documents/lords-committees/communications/socialmediaoffences/SMCOEvidence.pdf [Assessed 8th December 2017].

[421] It is the liberty to freely say what one pleases, as well as the related liberty to hear what others have stated. It includes freedom to create and distribute movies, pictures, songs, dances, and all other forms of expressive communication.

[422] Article 10 (Freedom of Expression) Human Rights Act 1998 https://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/I/chapter/9?view=extent [Assessed 20th June 2019]; Council of EU Publishing (2007), 'Freedom of Expression in Europe', Case-law concerning Art 10 of the European Convention on Human Rights, Human Rights file no 18; even in the EU it is subject to various restrictions.

[423] Pollicino, O., (2019), 'Judicial protection of fundamental rights in the transition from the world of atoms to the word of bits: The case of freedom of speech', European Law Journal, Vol 25, Issue 2, pp 155-168.

makes online publishers to ignore legal constraints (see-2.11.3, 7.5, 8.2.2). This digital century is the era of knowledge and information; however, it is pivotal to understand the impact of knowledge and information provided. Social media publishers do not analyse the obtained information[424] and how other readers will react to this information[425]. The readers follow information supplied via online means more quickly than that supplied by traditional methods[426]. Social media forever democratised information and reset the balance of influence, which has increased defamation cases and online character assassination[427]. For instance, if a single source (Facebook) is providing information, it leads the user to a stage where their (personal/intellectual) ability to analyse things diminishes. They share or like without confirming authenticity or even understanding the context. A user in Denmark created a Facebook page against Muslims' Prophet, which attracted more than 1160 likes in two days[428]. The question arises, the users who followed and shared that page without analysing/understanding the content can they all be held liable? (Yes, according to the law they are all liable[429]). The individual who shares a defamatory post without analysing its credibility may still be a potential defendant of defamation (see-7.15). Internet users are legally responsible for material they publish, circulate, acknowledge or upload[430]. If they breach this responsibility they can be legally liable for the tort of defamation, privacy, and breach of personality rights.

Part-A established that the enhancement of internet technology, evolution of information sharing and communication via social media has transformed global communication (see-2.5). These changes may have both positive and negative impacts on the internet user. For example, sharing of information via social media is an

[424] The overwhelming majority of social media publications are not by professionals and do not go through legal checks. Therefore, social media became a powerful source of libel and personality rights breach.

[425] Bernhard, U., Dohle, M., & Kelm, O., (2017), 'Social Media Activities of Political Communication Practitioners: The Impact of Strategic Orientation and In-Group Orientation', International Journal of Strategic Communication, Vol 11, Issue 4, pp 306-323.

[426] Taylor, M., (2017), 'Empowering Engagement: Understanding Social Media User Sense of Influence', International Journal of Strategic Communication, Vol 11, Issue 2, pp 148-164.

[427] Thomas, J. B., Peters, C. O., Howell, E. G., & Robbins, K., (2012), 'Social media and negative word of mouth: strategies for handing un-expecting comments', Atlantic Marketing Journal, Vo 1, Issue 2, pp 84.

[428] Prophet Mohammed (ﷺ) cartoons controversy: timeline, (2015), online url:

http://www.telegraph.co.uk/news/worldnews/europe/france/11341599/Prophet-Muhammad (ﷺ)-cartoons-controversy-timeline.html [Assessed 21st April 2017].

[429] *Monir v Wood* [2018] EWHC 3525 (QB); as per Mr Justice Nicklin 'you can be held responsible for someone else's actions'.

[430] This material is known as user-generated content (UGC), it ranges from tweets, Facebook statuses, and comments to various uploads and significantly includes comments made by readers on blogs and online news articles.

effortless, swift and instant way of transmitting information[431] (see-2.5.1.2). The problem arises when transmitted information is negatively portrayed and shared without credibility. A negative impact arising from technology on society can manifest itself if a user accumulates, publishes, or shares harmful information which can victimise others[432]. Fake news and transmission of false information is an abuse of freedom of expression[433]. Such users violate fundamental statutory rights and they should be liable for the legal responsibility of defamation[434]. This legal responsibility may have been shifted from traditional legal responsibility to a digital one (cyber defamation). The application of law is still conventional and difficult to implement in cyberspace. A scholarly[435] debate can help identify whether this digital legal responsibility has been adequately handled by using traditional methods[436].

2.10.1.: Electronic versus traditional defamation:

The damage caused by social media defamation could be much more than in traditional media. The 2013 Act puts the entire burden on the author of the defamatory content in social media (Section 5, excludes ISPs); whereas in traditional media, the author, editor and publisher are equally responsible in a defamation claim. The defamation that takes place via social media can be considered to be, in certain ways, radically different from defamation through other mediums because it poses new technology-based legal complications. The new legal issues arise because:

1. Social media communications can be anonymous
2. A social media post can be published at various locations at once

[431] Joyce, D., (2015), 'Internet Freedom and Human Rights', European Journal of International Law, Vol 26, Issue 2, pp 493-514.
[432] John, S., (2000), 'Defamation and Discourse in Cyberspace', Duke law journal, Vol 49, pp 855-878; once a message enters cyberspace, millions of people can access it. Even if it Is posted in a private discussion forum.
[433] *AB v Facebook Ireland* [2013] NIQB 14; social media sites can be misused as a medium through which to defame, abuse, intimidate or threaten.
[434] Equality and Human Rights Commission, (2105), Legal Framework, Freedom of Expression; online file:///M:/00%20fINAL%20DRAFT%20aUGUST/Progression%20document%20chapters/foe_legal_framework_guidance_0.pdf [Assessed 20th April 2018].
[435] Judges, Solicitors, practitioners and even academics can be invited to shed light and resolve this issue.
[436] Magalla, A., (2016), 'It's All Begins with Unlawful Publication: Cyber Defamation in Tanzania: Law and Practice' (LAP LAMBERT Academic Publishing, Tanzania), pp ix.

2.10.2.: Anonymity:

The informal, seemingly unregulated nature of cyberspace often leads social media users to believe their communication will be immune from defamation liability (see-7.5). However, this imprudent perception is far from reality because cyberspace defamation occurring via emails, bulletin boards, during chats in chat rooms or even via 'social media websites' are all actionable (see-8.2.2). The anonymity of social media users will also present enormous challenges to traditional defamation laws (see-2.10.4). Ascertaining the identity of the person hiding behind the veil of anonymity can prove to be a major hurdle because once a defamatory article is published through social media it is readily available to any user to read/comment and re-publish[437]. If the person who published the potentially defamatory statement is untraceable[438], the question is who should be held liable in such circumstances. Proceeding in the absence of the defendant (see-7.6) and Norwich Order (see-5.9.3.1) helps the victims because the general idea is that the anonymous users cannot be allowed to use social media to degrade others freely.

Along with the above-mentioned challenges, the most problematic issues while preparing a claim include determining the victim's community, establishing the liability of the content publisher, identifying anonymous defendants and evaluating the freedom of speech aspects. It is interesting that all these challenges are resolved by applying traditional rules; however, these legal questions ask legislators and judiciaries to think in digital terms rather than in geospatial, chronological, sequential, and hierarchical ones i.e. cyberspace defamation demands a redefinition of the key legal terms[439]. For instance, a publication is radically different in printed media as compared to electronic media. In social media, published content can be republished in seconds, so there can be no comparison of the distribution of content between the two forms of media.

[437] Lewis, E.P., (2009), 'Unmasking Anon 12345: Applying an Appropriate Standard when Private Citizens Seek the Identity of Anonymous Internet Defamation Defendants', Uni. Of Illusion Law Rev, Issue 3, pp 947-973.

[438] He may be using dark-net or nothing more than anonymous username.

[439] Kulesza, J., (2008), 'Internet Governance and Jurisdiction of States: Justification of the Need for an International Regulation of Cyberspace', Global Internet Governance Academic Network, Annual Symposium, pp 22.

2.10.3.: Publication:

The mode of 'publication' is particularly noteworthy in a social media context because of the single publication rule. Social media communication, unlike the more traditional mediums, is interactive, far-reaching, borderless and instantaneous (see-2.5.1.2). Such online engagements have the ephemeral qualities of gossip concerning accuracy because it enables its users to tweet/share/broadcast a publication to a much wider audience at no cost at all[440]. Due to the impersonal and anonymous nature of online social interactions, they may invoke greater risks. These social interactions do possess tremendous power to harm other's reputations because they are communicated via a medium, which is more persuasive than printed media, or any other medium[441]. Justice Kearns[442] differentiated between electronic and traditional defamation because internet material can reproduce itself in a variety of ways:

1. Voluntarily by archiving/backing up
2. Incidentally by bots and spiders

Users have the option to 'save/download' on most devices. Therefore, there exists a potential for future defamation because if one copy of the 'restricted content' is kept somewhere, it can resurface at any point[443]. The 'HTTP protocol' can preclude search engines, spiders and bots from indexing a page and its material (see-2.4.1). It cannot prevent the online user from saving or reproducing anything.

2.10.4.: Anonymity in social media: Challenge to defamation:

A social media user cannot direct his post to a specific fraternity because he may not have control over who accesses this information (see-7.21.1). This publication is available for anybody to access and worldwide availability can subject him to a legal

[440] Osterrieder, A., (2013), 'The value and use of social media as communication tool in the plant sciences, Plant Methods, Vol 9, Issue 2, pp 9-26.
[441] Lidsky, L.B., (2000), Silencing John Doe: defamation & discourse in cyberspace. Duke Law Journal, Vol 49, Issue 4, pp 855-946.
[442] *CSI Manufacturing Ltd v Dun and Bradstreet* [2013] IEHC 547; the court clarified that for internet publications, if the content has been placed online or accessible in the claimants state is sufficient under the Defamation Act; however, if the publication is by subscription site, which are only accessible to people paying a fee, it does not fulfil the requirements of publication under this Act.
[443] The ability of internet users to save pages for later access and the ease with which information is shared nowadays (with a mere click of a button), is it not highly anticipated as a 'probable' result.

action anywhere in the world. Technically, a court cannot have power over every social media user because before deciding a case, a court must have 'personal jurisdiction' over the litigants (see-2.3.1, 4.5.2, 6.9).

To avoid global prosecution internet users rely on anonymous tools[444]. Anonymity via the dark web has become a more significant challenge in the application of traditional rules[445]. These networks (Tor, I2P, Freenet, GNU net, and Zero Net) are made for anonymity and keep users anonymous while browsing or hosting websites[446]. They disguise users' IP address by routing web traffic through a worldwide series of nodes and relays (other computers) (see 2.4.1). Social networks exist, similar to the ones on the 'clear net', which use the same format as Facebook. There are also IRC chat rooms, which allow connectivity with other regular social media websites while being anonymous (see-2.12.1).

Conversely, if the defamatory statement is published through a decentralised organism or a distributed database, then technically nobody can claim personal jurisdiction[447] (see-2.3.4). Even if a state assumes personal jurisdiction, then the question arises of what law is available to govern it[448]? In common law the choice of 'applicable law' depends on the place of publication or place of harm[449].

2.10.5.: Country of origin versus place of harm:

The place of tort and the place of harm are two different concepts because the country of origin is not part of a traditional approach (see-6.3.1). It originated with the idea of

[444] Akdnniz, Y., (2002), 'Anonymity, Democracy, and Cyberspace', Social Research, Vol 69, issue 1, pp 223-237.
[445] Arden, D. M., (2017), 'Privacy and third parties to criminal proceedings', The Cambridge Law Journal, Vol 76, Issue 3, pp 469-472.
[446] Hardeveld, G. J., Webber, C., & O'Hara, K., (2017), 'Deviating from the cybercriminal script: Exploring tools of anonymity (mis)used by carders on crypto markets', American Behavioural Scientist, Vol 61, Issue 11, pp 1244-1266.
[447] Its content are constantly changing as it moves silently around the globe from network to network and machine to machine, never settling down in any one legal jurisdiction, or on any one computer.
[448] It is even impossible in social media i.e. Usenet discussion groups consist of continuously changing collections of messages that are routed from one network to another, with no centralized location at all. Hence, they exist, in effect, everywhere, nowhere in particular, and only on World Wide Web.
[449] Sooksripaisarnkit, P., (2014), 'A common law position for a choice of law in internet defamation – the case for Hong Kong', Journal of International Commercial Law and Technology, Vol 9, Issue 3.

unification of conflict of law in the EU[450]. It subjects an individual to the laws of the country where the tort originated so online users are only required to comply with the regulations of the state, where they are based (see-2.7.1). On the contrary, English approach is based on the law of the place where the harm suffered or is likely to occur (see-7.16). It corresponds to the law of the injured party's country of residence (see-2.7.2). In social media defamation, there can be multiple 'place of damage' so the originator of the material could be subject to the laws of numerous states.

It would be easy to grant jurisdiction to the state where the website is registered but in social networks, users can have many followers from various geographical locations. It is also debatable whether in online defamation the defendant but also all other players (Usenet hosts[451], website designers, intermediaries[452], marketing and sales companies, search engines and ISPs[453]) should be sued rather than the individuals[454]. Especially, with the extensive use of social media, where posts can be re-tweeted and shared globally, international law cannot impose obligations on every user to comply with its principles.

Similarly, there could be differences in the reporting of a private and public figure[455]. Different principles may be applied to prove defamation for celebrities, media persons, sports personalities, religious figures and political persons[456]. A published statement can also re-emerge from its lurking-place at a later stage so it is important to grasp the ideas of limitation period, single publication rule and double actionability principle.

[450] Article 3(1) The Rome II Convention for torts, delicts, or non-contractual relations, Council Regulation (EC) No 864/2007, OJ L 199//40

[451] Internet computers on which newsgroup bulletin boards are stored.

[452] An operator of a computer system which provides the technical link between internet content providers and internet users, whether by hosting, caching or distributing information.

[453] The operator of a network of interconnected computers, which allow information to be stored, accessed and transferred by internet users via the worldwide web, UseNet and e-mail.

[454] If these website hosts and search engines make billions of pound they become a part of this fabric society i.e. these organisations have zero excuses for not fixing a problem.

[455] Public figures enjoy a right to privacy and there is legitimate public interest in the affairs of public figures i.e. they may not enjoy the same degree of protection as citizens not in the public spotlight when it comes to defamation online http://webtechlaw.com/2013/02/04/johannesburg-high-court-rules-on-facebook-defamation-html/[Assessed 8th February 2017].

[456] The UK laws do not distinguish between public figures and political persons; however, private citizens are treated differently for defamation laws: For private individuals, any false statement that harms the person's reputation may be unlawful. For public figures, the defamatory statement is unlawful only if it was made with actual malice. Therefore, the user who published it knew at the time that the statement was false. Otherwise, he acted with reckless disregard as to whether or not the statement was false. For public figures, this legal distinction makes a libel case harder to prove and win.

2.11.: Single versus multiple publication rules:

The concept of 'publication' is interpreted differently across continents (see-2.11.1). Under multiple publication rule[457], each time a communication reaches another person, a new publication is established. Every single newspaper or magazine is regarded as a separate publication and this rule also applies to a TV program or a radio transmission[458]. Similarly, every social media tweet is seen as a new publication regardless of whether it is re-shared, followed or forwarded. It is arguable whether those who merely re-share/re-tweet a statement can also be at risk; especially, in the absence of 'editorial control' for those who re-publish a statement[459] (see-7.7). There is a difference between single and multiple publication rules:

1. According to 'single publication rule', any form of aggregate publication is a single communication, which can have only one cause of action (see-2.11.3)

2. According to 'multiple publication rule', there will be a new cause of action every time defamatory material is uploaded or shared online. It is interesting to note that 'the statute of limitation' and 'date of publication' have no significance under multiple rule but they are immensely important under single publication rule (see-2.11.6)

The multiple publication rules, established in the Harmer case[460], have been applied for centuries. It allows the limitation period to restart every time the published material is re-published[461]. Therefore, in social media libel, the claimant can bring an action, even after several years because every 'hit' on the web page invokes a new cause of action for libel claim[462]. The Defamation Act 2103 modified the concept of publication. Section 8 specifically updated the law applied to defamatory publication made via cyberspace. It does not affect a court's discretion to allow any libel claim even after the

[457] Connolly, U., (2012), 'Multiple Publication and Online Defamation', Masaryk University Journal of Law and Technology, Vol 6, Issue 1, pp 35.
[458] *Duke of Brunswick v Harmer* [1849] 14 QB 185.
[459] Unless, a new rule is proposed anybody who tarnishes the reputation of any individual, in the eyes of right thinking members of society, is at a risk to be sued.
[460] *Duke of Brunswick and Luneberg v Harmer* [1894] 14 QB 184; the court held that the limitation period resets every time the publication is viewed.
[461] *Slipper v BBC* [1991] 1 QB 283.
[462] Connolly, U., (2012), 'Multiple Publication and Online Defamation-Recent Reforms in Ireland and the United Kingdom', Masaryk UJL & Tech, Vol 6, Issue 1, pp 35-51.

lapse of one-year rule. The limitation period for defamation claims is one year from the date on which the cause of action accrued (see-2.11.6). Single publication rule is also applied in the US but its application is radically different compared to the UK.

2.11.1.: UK versus US single publication rules:

In the US, single publication means that material is published only once[463], which has been applied since the *Wolfson* [1938][464] case. The same rule was applied to online defamation in the case of *Firth* [1998][465]. However, the 'single publication' rule is applied differently in England because each communication constitutes a separate tort with regard to choice of law and jurisdiction[466]. The applicable law may be similar for the first publication but will vary for further publications of the same material. If material is re-published overseas, the courts can only assume jurisdiction concerning torts published in England and there will be no jurisdiction concerning the torts established on defamation in other countries[467].

If defamation partially materialised in both England and another foreign country in this scenario, the only applicable law is common law of tort of defamation under English law[468]. For example, a French national's Facebook status is re-shared, re-published, or followed in England; this will invoke a fresh tort of defamation in England. However, the claimant has the option to sue either in England or in France. If the claimant brings an action in England against an EU national the applicable law could still be decided using private international law principles[469] (Brussels I Rules will be applied for EU nationals, unless decided otherwise after Brexit 2019) (see-6.7).

[463] *Keeton v Hustler Magazine, Inc* [1984] 465 US 770; a defamatory material is published only once.
[464] *Wolfson v Syracuse Newspapers Inc* [1938] 254 App. Div. 211; court rejected multiple publication rule because, as observed, the period of limitation would never expire so long as a copy of the published material remained in stock.
[465] *Firth v State* [1998] N.Y.2d 365.
[466] Pandey, V., (2014), 'The "Single Publication" Rule Of Defamation On Social Networking Websites' available online at:
http://www.mondaq.co.uk/india/x/346258/Libel+Defamation/The+Single+Publication+Rule+Of+Defamation+On+Social+Networking+Websites [Assessed 21st April 2017].
[467] Hartley, T. C., (2010), 'Libel Tourism' and Conflict of Laws, International and Comparative Law Quarterly, Vol 59, Issue 1, pp 25 – 38.
[468] Hansard Col 69 WH (17 December 2008); Kennedy, D., (2012), 'MPs Accuse Courts of Allowing Libel Tourism' The Times (London England 18 December) 27.
[469] Private International Law (Miscellaneous Provisions) Act 1995.

2.11.2.: Single publication rule (EU):

In the EU courts, further publication is called 'distribution' rather than a 'new publication[470]'. Section 11 of the Irish Act 2009 provides for a single cause of action against multiple publications of the same defamatory statement. (The EU rule is beyond the scope of this thesis).

2.11.3.: Single publication rule (S8):

Section 8 replaced the common law principle of 'multiple publication rule' and introduced the single publication rule: "Any cause of action against the person for defamation in respect of the subsequent publication is to be treated as having accrued on the date of the first publication" (see-2.13.1.2). It may help to prevent indefinite liability for online publications because it also includes the material saved in internet archives. An article by a Bradford student published in 2017 can only be defamatory till 2018, according to the limitation period. If he again republishes the same article on another website in 2020, it cannot be actionable defamation because one year has elapsed[471]. However, if the same article is re-published by the librarian of Bradford University in 2020, it will amount to a new claim of tort of defamation (depending on whether an injunction has already been granted). Single publication rule is only valid for a user who publishes both the first and subsequent articles. However, for the librarian, there will be a new limitation period of one-year because he is not the person who published that article 'first time'. Hence, if a video, voice recording or any other defamatory material is shared/re-published by a different website broadcaster, it can attract a new libel claim every time (see-5.3).

2.11.4.: The importance of single publication rule:

Section 8 aims to deter unnecessary litigation. It appears as though the approach taken with the 2013 Act is to reduce awards for damages as, surely, multiple actions for different statements can cumulatively result in a bigger award – a single action cannot, usually, have the same result (see-7.11). It is a longstanding common law rule that it is

[470] Hartley, T. C., (2010), 'Libel Tourism' and Conflict of Laws', International and comparative law quarterly, Vol 59, Issue 01, pp 25-38.
[471] *Steedman v BBC* [2001] EWCA Civ 1534.

no defence to prove that the defendant was only repeating other's statement[472]. This repetition rule is affirmed in Section 2 (2) of the 2013 Act, which focuses on imputation conveyed by a statement to incorporate this rule. Therefore, from the above examples, if a different website owner or broadcaster re-publishes / re-broadcasts old material, then they cannot rely on the rule because they are not the person who published it first (see-2.13.1.2). The choice of law rules become increasingly important when judges decide social media defamation cases (see-7.13). Besides, 'jurisdiction' will remain the main issue because the choice of law rules has no effect on jurisdictional law i.e. no matter where defamation took place, the English courts have to apply traditional jurisdiction laws to assume jurisdiction (see-6.8).

This problem can be resolved by creating a 'universal communication code', which is applied to all material distributed/communicated/shared/followed or published online. Then again, there is a 'grey area' in applying 'universal communication legislation' to social media. Every social network makes its users agree to their terms and conditions. The question arises, which law is applicable to social media defamation even if a court assumes personal jurisdiction. It is arguable that if users have agreed to follow the terms of social networks then the content providers must also be responsible for alleged defamation. There can be a further issue if the claimant is based in a foreign state and wishes to pursue a claim in England. At this point, the 'double actionability rule' becomes very important. It allows a foreign claimant to issue proceedings in England if the alleged defamation is also actionable in England.

2.11.5.: Double actionability rule:

Defamation is excluded from EU Regulation for the purpose of applicable law, so it is governed by a double-action ability rule in England (see-4.2.1.5). Section 13 (1)[473] stated that double action-ability rule applies to defamation claims. It requires the claimant to show that his claim would succeed in both England and in the law of place where the claim arose[474]. It has been widely criticised for being parochial and

[472] 'A4ID' Online Defamation Training Transcript (2015), www.a4id.org/wp-content/.../Transcript-of-A4ID-Online-Defamation-Training.pdf [Assessed 23rd April 2017].
[473] Section 13, the Defamation Act 1995.
[474] A tort is only actionable in England if it is civilly actionable under the foreign law of the jurisdiction in which the act occurred (usually publication) and, if the act had occurred in England and Wales, it would be civilly actionable under English law.

chauvinist[475]. The peculiarity of this rule was to insist on the application of both principles, requiring that liability be established under both sets of laws, law of the forum and law of the place of the tort – thus it is widely known as the rule of 'double-actionability'[476].

If a libel victim brings a claim in England for the statements published in England, the court will apply English law[477]. If the claim is brought based on the statements published abroad, then double actionability rule will be applied[478]. It suggests a combination of viewing tort as having a public regulatory function as well as being concerned with conduct regulation[479]. From this rule's perspective, English law should be applied to any tort, regardless of where it was committed[480] because it also uses the place of tort. It is only applied if the limitation period of one year has not lapsed for a defamation claim.

2.11.6.: The limitation period:

Under section 32 (A) of the Limitation Act 1980, the 'limitation period' to bring a defamation claim is one year. It runs from the date, the cause of action accrued[481]. There is no absolute maximum limit of limitation period, even if the claim is filed at the last minute. LJ Laws[482] accepted a libel claim, which was issued one day before the expiry of the limitation period. David Eady[483] decided that the service at the eleventh hour of the last day of 1 year was valid (see-2.12.2.1).

[475] Robilliard, B., (2007), 'Jurisdiction and choice of law rules for defamation actions in Australia following the Gutnick case and the uniform defamation legislation', Australian International Law Journal, Vol 14, Issue 14, pp 185-199.
[476] Lindell, G., (2002), 'Regie national des usines renault SA v Zhang : Choice of law in torts and another farewell to Phillips v Eyre but the 'Voth test' retained for forum non conveniens in Australia', Melbourne Journal of International Law, Vol 3, Issue 2, pp 364-382.
[477] *King v Lewis* [2005] ILPr 16.
[478] *Red Sea v Bouygues* [1995] 1 AC 190; there must be a civil liability for the alleged defemation in foreign country.
[479] Sooksripaisarnkit, P., (2014), 'A common law position for a choice of law in internet defamation - the case for Hong Kong', Journal of International Commercial L. Tec., Vol 9, Issue 3, pp 129-137.
[480] Private International Law (Miscellaneous Provisions) Act 1995; Joint Report of the Law Commission (No.193) and the Scottish Law Commission (No.129) on 'Private International Law: Choice of Law in Tort and Delict' (1990) (supra n 24), at [2.7].
[481] *Reed Elsevier v Bewry* [2014] EWCA Civ 1411.
[482] *Simpson v Mirror Group Newspapers Ltd* [2016] EWCA Civ 772.
[483] *Howard Kennedy v The National Trust for Scotland* [2017] EWHC 3368 (QB).

2.12.: The relevant provisions of CPR:

The provisions of CPR rules relevant to this thesis are:

1. Practice Directions part 6 – service of documents
2. Practice Directions part 7 – how to start proceedings
3. Practice Directions part 11 – disputing the court's jurisdiction

2.12.1.: Part 6 – service of documents:

CPR 6 is further divided into two sections:

1. 6A – service within the UK
2. 6B – Service out of jurisdiction

2.12.1.1.: When court permission is not required:

Service within the UK: CPR r6.32 explains the procedure of 'service of the claim form' where the permission of the court is not required (within Scotland and Ireland). **Service outside the UK:** CPR r6.33 explains the procedure of 'service of the claim form' where the permission of the court is not required to serve a writ outside the UK[484].

2.12.1.2.: When court permission is required:

To request court permission to serve outside England, the claimant must state the reasons why r6.32 and r6.33 do not apply. For instance, the defendant is based in US which is not part of the Lugano Convention and Civil Judgment and Jurisdiction Act 1982 does not apply in the US. CPR r6.36 explains that in any proceedings to which r6.32 or 6.33 does not apply, the claimant may serve a claim form out of the jurisdiction with the permission of the court if any of the grounds set out in paragraph 3.1 apply[485] (see Picture-3).

[484] In some cases where the English court has jurisdiction to resolve a dispute, one or more defendants may be located outside the court's jurisdiction. The claimant may serve the claim form on the defendant out of the United Kingdom where each claim against the defendant to be served and included in the claim form is a claim which the court has power to determine under the 1982 Act or the Lugano Convention.

[485] Sime, S., (2016), 'A Practical Approach to Civil Procedure', (19th Ed, OUP, Oxford), pp 118.

It states that the application form should be served under r6.45 and any documents accompanying the application must be provided for each party to be served out of the jurisdiction, together with forms for responding to the application[486].

Picture-3[487]: Method of service

Method of service	Step required
First class post, document exchange or other service which provides for delivery on the next business day	Posting, leaving with, delivering to or collection by the relevant service provider
Delivery to or leaving the document at the relevant place	Delivering to or leaving the document at the relevant place
Personal service under rule 6.5	Completing the relevant step required by rule r6.5 (3)
Fax	Completing the transmission of the fax
Other electronic method	Sending the e-mail or other electronic transmission

CPR r6.2 determines that a claim form may be served, by any of these specified methods: (1) Personal service in accordance with r6.4, (2) First class post and fax. However, courts have also used alternative methods to allow service outside[488] (see-7.4). Section III, Part 6 also explains special provisions about service outside and the circumstances in which the permission of the court is or is not required are set out in (see-6.9.1). In social media cases, foreign defendants are difficult to trace or approach. This may be a genuine reason to authorise permission to serve by a method not permitted by conventional rules (see-7.4.2). Hence, it could be a modern adoption of

[486] CPR r6.45 is concerned about translation of claim form or other documents. The translation must be in the official language of the country in which it is to be served; or if there is more than one official language of that country, in any official language which is appropriate to the place in the country of service.

[487] English Judiciary, available online at https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part07 [Assessed 6th March 2018].

[488] *Elmes v Hygrade Food Products PLC* [2001] EWCA Civ 121; such order may be made prospectively but not retrospectively.

technology to the traditional rules if the court allows service using the same network where the defamation occurred.

2.12.2.: Part 7 – how to start proceedings:

This section explains the procedure of serving documents and starting a claim process. It is interesting to note CPR 6.36 requires the claimant to serve each defendant with a separate and original claim form[489]. Failure to comply with this condition will be a defective service[490].

2.12.2.1.: Time for service of a claim form:

1. **The defendant is in England:** CPR r7.5 (1) determines that once the court issues the claim form it must be served on the defendant within 4 months of the date of issue. Service must be completed before 12.00 midnight on the calendar day.
2. **The defendant is outside England:** CPR r7.5 (2) states that if the defendant is not domiciled in England than the period of service is 6 months from the date the court issued the form.

In the *Kennedy*[491] case, the claimant issued a defamation claim form on 24th (the final day of the limitation period). The form was sent by post to the defendant's office. Sir David Eady concluded that the final day on which the claim form received was valid (see-7.12.2). The defendant can request court for an extension (see-2.13.1.2). However, judge is only permitted to extend time retrospectively if the criteria under r7.6 (3) are satisfied. This criterion is based on a "no-fault" regime, which requires a judge to consider following[492]:

1. The court failed to serve the claim form

[489] Briggs, A., (2015), 'Civil Jurisdiction and Judgments' (6th Ed, Informa Law Routledge, England), para 5.01.
[490] *Bank of Boroda, GCC Operations v Nawayny Marine Shipping FZE* [2016] EWHC 3089.
[491] *Howard Kennedy v The National Trust for Scotland* [2017] EWHC 3368.
[492] Ministry of Justice - https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part07 [Assessed 6th March 2018].

2. The claimant has taken all reasonable steps to comply with CPR r7.5 but has been unable to do so
3. The claimant has acted promptly in making the application

If the claimant is unable to fulfil any of the requirements stated above, his 'service of writ' will become invalid.

2.12.2.2:: When the service is valid:

The service of court documents depends on the interplay between r6.14 (deemed service) and r7.5 (actual service). There are different rules for service depending on the defendant's location.

Picture-4[493]: Procedure of service

Title	Number
Where to start proceedings	Rule 7.1
How to start proceedings	Rule 7.2
Right to use one claim form to start two or more claims	Rule 7.3
Particulars of claim	Rule 7.4
Service of a claim form	Rule 7.5
Extension of time for serving a claim form	Rule 7.6
Application by defendant for service of claim form	Rule 7.7
Form for defence etc. must be served with particulars of claim	Rule 7.8
Fixed date and other claims	Rule 7.9
Production Centre for claims	Rule 7.10
Human Rights	Rule 7.11
Electronic issue of claims	Rule 7.12

2.12.2.3.: Service of a claim form:

The critical question to discuss here is whether r6.14 fixes the date on which service occurs for all CPR purposes i.e. is there a distinction between the actual date of service

[493] Ministry of Justice - https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part07 [Assessed 6th March 2018].

and the deemed date. Notably, if the writ is served within the jurisdiction, this issue would not arise because CPR rules made a distinction between the wording:

1. **CPR r7.5 (1)** - deals with service in England. It requires the claimant to complete the relevant step within four months of issue

2. **CPR r7.5 (2)** - deals with service outside England. It requires that the claim form is served within six months of issue

Justice Baker[494] ruled that r6.14 fixes the date for all CPR purposes, including the date of service in Scotland. Whereas in the case of Paxton Jones [2017][495], the court concluded that the 'deeming provisions' (r6.14) operate as a means of calculating other deadlines i.e. acknowledgement of service within 14 days and defence (see-6.8.2.1).

The above proves the distinction between 'deemed date' and 'actual date' of service. There may be further complications in applying these complex rules to social media defamation because there can be different defendants in different jurisdictions. The claimant may have to request specific permission to serve every defendant.

Similarly, if some of the defendants are based in England and one of them is outside England, the claimant will have to serve all defendants within the jurisdiction and outside the jurisdiction. The wording of r6.14 fixes the deemed date of service for "a claim form served" whereas no such provision is made for 'actual date of service'. Interestingly, a defendant can only challenge jurisdiction once service is completed.

2.12.3.: Part 11 – disputing the court jurisdiction:

If valid service took place, English court can exercise personal jurisdiction over a foreign-based defendant. The defendant has a right to choose the court where he wishes to litigate the matter by disputing English jurisdiction[496]. Both EU and non-EU based defendants can challenge English jurisdiction.

[494] *Brightside v RSM UK Audit* [2017] 1 WLR 1943.
[495] *Paxton Jones v Chichester Harbour Conservancy* [2017] EWHC 2270.
[496] *VTB Capital Plc v Nutritek International Corpn* [2013] UKSC 5.

If the defendant is an EU national, he has to prove that Brussel Regulation 1215/2102 is not properly applied (this is beyond the scope of this thesis). On the other hand, if the defendant is a UK national and wishes the proceedings to be brought in Scotland or Ireland rather than England he has to show that it will be more convenient if the matter is resolved in other state[497]. The normal standard of natural forum is shifted towards 'convenience' and instead of actual service, the applicable rule will be deemed service (see-2.12.2.1). The defendant who is neither based in the UK or EU has to prove[498]:

1. CPR r6.36 is not properly applied (see-2.12.1.2)
2. England is not an appropriate forum (see-2.17.1)

CPR r11 allows a defendant to dispute English court's jurisdiction[499]. CPR r11 (1) provides that a defendant can apply to the court:

1. Who wants to dispute the court's jurisdiction[500]
2. Who argues that the court should use its discretion to exercise its jurisdiction[501]

CPR r11 (2) determines that the defendant has to acknowledge service of the claim form before applying for an order to dispute jurisdiction[502], which must be in writing under Part 10[503]. Acknowledgement is compulsory because if the defendant is unsuccessful in his application, the court may start the proceedings without further delay[504]. However, the acknowledgement of service does not mean that the defendant cannot dispute the court's jurisdiction[505]. CPR r11 (4) provides that any application by the defendant must be filed within 14 days[506], with all the supporting evidence. The defendant can also request English courts to grant a retrospective extension of time where appropriate[507].

[497] *Cumming v Scottish Daily Record and Sunday Mail* [1995] EMLR 538; the defendant can also object England jurisdiction if the proceedings have already started in other part of the UK.
[498] *Standard Bank Plc v Efad Real Estate Company WLL & Ors* [2014] EWHC 1834.
[499] *Zumax Nigeria v First City Monument Bank plc* [2014] EWHC 2075; *Polymer Vision v Van Dooren* [2011] EWHC 2951 (Comm) as per justice Beatson.
[500] *Bank of Boroda, GCC Operations v Nawayny Marine Shipping FZE* [2016] EWHC 3089
[501] *Erst Group Bank AG v JSC "VMZ Red October"* [2013] EWHC 2926.
[502] *Mitchell v News Group Newspapers Limited* [2013] EWCA Civ 1537.
[503] The defendant must fill in form N9, provide the service address and lawyers business address and should sign the declaration.
[504] *GMBH v F&M Bunkering Ltd* [2014] EWHC 192 (Comm) as per Mr Justice Blair.
[505] *Peretz Winkler and another v Angela Shamoon and others* [2016] EWHC 217.
[506] *The Alexandros T* [2013] UKSC 70; as per Lord Clarke made it clear that this time limit of CPR Pt 11(4) is not in contrary to Article 27 of the Judgments Regulation.
[507] *Texan Management Ltd v Pacific Electric Wire and Cable Co Ltd* [2009] UKPC 46.

CPR r11 (5) provides that if the defendant does not make such application, he will be considered to have submitted to the court's discretion[508]. Even after the lapse of the allocated time limit, the defendant may still apply to the court to dispute jurisdiction - such an application may be very weak and may be set aside[509].

2.12.3.1: If jurisdiction is disputed:

If the defendant can satisfy the judge that there is another more appropriate forum, the burden then shifts back to the claimant to show that there are special circumstances in the interests of justice for the case to remain in England (see-7.12). However, the defendant who wants to challenge jurisdiction must follow the relevant procedure[510] because failure to comply with stricter rule may result in a waiver of the right to dispute the jurisdiction[511]. It is important to note that CPR r11 is not concerned about territorial jurisdiction, but the authority and power of the court[512] (r6.20 and r2.3 are concerned with territorial jurisdiction). If a court has territorial jurisdiction, it may allow a claimant to serve a claim form on a foreign defendant in any overseas territory[513], and then the defendant can challenge it. Anthony Clarke[514] stated that an issue related to service could only be raised once the territorial jurisdiction is established.

Considering the complex nature of social media defamation this thesis submits that traditional CPR provisions can cause "unfortunate tension" between CPR and the Defamation Act provisions.

[508] It fulfils a legitimate aim to make sure that whether the proceedings are to be tried on their substantive merits in England are taken promptly and without unnecessary costs. It also satisfies the principle of legal certainty because parties need to know where they stand.
[509] *Hallam Estates v Baker* [2014] EWCA Civ 661.
[510] *Newland Shipping and Forwarding Ltd v Toba Trading FZC* [2017] EWHC 1416.
[511] *Strickson v Preston County Court* [2006] EWHC 3300; the court held that the defendants had waived the right to challenge jurisdiction by filing an acknowledgment of service and then failing to apply to dispute jurisdiction under CPR 11.
[512] The definition of "jurisdiction" is not exhaustive – it may be used in 2 meaning: (1) Territorial and (2) Authority and power.
[513] The rules to serve documents outside England and Wales are detailed in practice direction 6 B that supplements section IV of CPR r6 – service out of the jurisdiction.
[514] *Hoddinott v Persimmon Homes* [2007] EWCA Civ 1203.

Chapter 2

Part C

The Defamation Act 2013

2.13.: The interpretation of the Act:

This section will discuss the likely practical implications of the Defamation Act 2013. A list of all the provisions are attached (see Appendix-VI)

2.13.1.: Relevant provisions:

Sections 1, section 8, section 9 are directly relevant areas for this research.

2.13.1.1.: Section 1 - Serious Harm:

The serious harm threshold is defined: "A statement is not defamatory unless it has caused (or is likely to cause) serious harm to the claimant". This requirement of Section 1 is in addition to existing definitions of defamatory meaning because claimants have to show that the statement:

1. Caused or is likely to cause serious injury to the claimant's reputation
2. Tends to lower the claimant in the estimation of right-thinking members of his community; or substantially affects the attitude of others towards the claimant adversely

The purpose of this section is to deter trivial or spurious claims. It may also help to entrench the protection of freedom of expression. It is a broad concept but was necessary because English defamation law was skewed towards claimants[515]. This idea has already been established in the *Thornton*[516] case, where the court questioned that the harm caused by a publication must be sufficient to establish defamation. However, in its short span, the way it works has created significant difficulties for judges[517].

[515] Mullis, A., & Scott, A., (2012), 'The Swing of the Pendulum: Reputation, Expression and the Re-entering of English Libel Law', Northern Ireland Legal Quarterly (NILQ), Vol 63, pp 27.
[516] *Thornton v Telegraph Media Group* [2010] EWHC 1414; it also reaffirmed an old HL decision in *Slim V Stretch* [1936] about existence of seriousness threshold.
[517] *AMT Futures v Marzillier* [2017] UKSC 13; It is difficult to establish where serious harm occurred.

Based on the problems with this relatively new Act, it can be assumed that it needs to be examined carefully. In the *Ames* [2015][518] case the judge highlighted while assessing serious harm, "the factors linked to identify serious harm are same which identifies whether a tort is real or substantial". It is not a novel idea because Moloney QC[519] pointed out that this standard had already been devised in the case of *Jameel*[520], to stop the abuse of defamation process.

Parliament intended to weed out undeserving libel claims by introducing serious harm[521]. But it does not involve actual serious harm to reputation or likely serious damage to reputation in the future[522]". Similarly, evidence is required to satisfy the requirement of 'serious harm', which proves a departure from common law principles. Traditionally, the defamatory meaning test was purely objective because no evidence was needed other than 'the published statement' could adduce[523]. Nevertheless, if the publisher publishes an apology, the 'questionable statement' fails to fulfil the seriousness threshold[524]. This thesis recommends that if the defendant publish an apology after publishing the statement, it could still be of serious nature so this requirement must be waived (see-2.10.1). The 'impact of the apology' can be determined at the time of calculation of damages, but it cannot be used at the preliminary stage to refuse the claim (see-7.16).

2.13.1.2.: Section 8 – Single multiplication rule:

Section 8 (1) indicates that it applies to a user who publishes the same content. The defendant can only take advantage of this section if:

1. He made the first publication (published a statement to the public)
2. He subsequently re-published that statement or substantially the same statement (whether or not to the public)

[518] *Ames v Spamhaus Project Ltd* [2015] 1 WLR 3409 at [52].
[519] *Theedom v Nourish Training Ltd* [2016] EMLR 10 at [15].
[520] *Jameel v Dow Jones & Co* [2005] EWCA Civ 75; There must be a real and substantial tort, it established 'seriousness threshold', which is affirmed in S2 of 2013 act as 'serious harm'.
[521] Joint Committee (2012), 'First Report: The Draft Defamation Bill', HL 203, HC 930-I, pp27.
[522] *Lachaux v Independent Print Limited* [2015] EWHC 2242 (QB); as per Justice Warby.
[523] Groppo, M., (2016), 'Serious harm: A case law retrospective and early assessment', Journal of Media Law, Vol 8, Issue 1.
[524] *Jameel (Yousef) v Dow Jones & Co Inc* [2005] EWCA Civ 75.

Section 8 (3) ensures that the limitation period for both these publications runs from the date of first publication. Section 8 (4) highlights that single publication rule will not apply to re-publication if the subsequent publication is different from the first publication[525]. The critical issue for a judge is to consider whether the manner of the subsequent publication is materially different. Section 8 (5) provides that there are two factors which court will take into account: 'The level of prominence' and 'the extent of the subsequent publication. For instance, 'a new link to a news article, in the publisher's internet archive'; 'a repeat of a broadcast';' an old obscure article becoming very widely read after a newsworthy event takes place and/or the article gets tweeted around the world'; 'a new edition of a book'; will be protected under Section 8. However, if the original writer authorised the republication of the statement, he will still be held liable for defamation even after the limitation period of one year[526]. Section 8 (6) allows the court a discretion to accept a case even if the one-year limitation has lapsed, under equitable circumstances.

2.13.1.3.: Section 9 – Jurisdiction:

According to Section 9, if a defendant is not domiciled in the EU, English courts will not have automatic jurisdiction:

Section 9 (1) - explains the tort claims against the defendant who is not domiciled in the UK or EU[527] or a state which is for the time being a contracting party to the Lugano Convention[528].

Section 9 (2) - states that English court will not have jurisdiction to decide a case unless the court is satisfied that England is clearly the most appropriate place to decide that claim.

A comparison of 'publication' will be required between all the places in which the alleged statement has been published with 'publication' in England. However, the English court may still assume the jurisdiction if England is 'clearly the most

[525] Sec 8, Subsection 4 of the Defamation Act 2013.
[526] *Slipper v BBC* [1991] 1 QB 283 – if the author intended the statement to be repeated or where repetition is the natural and probable result of the original publication.
[527] Section 9 (4) (a): A person is domiciled in the United Kingdom or in another Member State if the person is domiciled there for the purposes of the Brussels Regulation.
[528] Section 9 (4) (b): A person is domiciled in a state which is a contracting party to the Lugano Convention if the person is domiciled in the state for the purposes of that Convention.

appropriate jurisdiction' for the case. It does not limit the claimant geographically so a claimant, with a little connection with England is eligible to initiate libel proceedings, regardless of domicile and nationality. *Bruno* [2015][529] is the latest example provided by case law. A French national, who lives and works in Dubai, was able to bring defamation claim in the UK because his ex-wife was British[530]. Bruno became the first case using the Defamation Act 2013 in which court clarified Section 1 (1) and laid down general principles of serious harm for future reference[531]. It is important to understand that traditional jurisdiction law binds judges to apply the forum suitability test, which can also reduce libel tourism.

2.14.: Problems with the 2013 Act[532]:

There are few areas of concerns of the 2013 Act regarding its application to online defamation disputes.

1. Magnitude of Harm

Defamation law protects the claimant's interest in the way third parties think of him. What interest, or interests, the wrong of defamation protects is not such a straightforward question. The concept of reputation is a problematic legal construct on its own. The tort of defamation protects the interest in reputation: If 'non-serious' injuries can never be redressed through the operation of the wrong, then defamation cannot be said to protect the claimant against his reputation i.e. the operation of the tort of defamation is subject to defences.

2. Likelihood of Harm

The injury to the claimant's reputation must always be part of the cause of action. At the time of publication via social media, no harm may be caused, but it may cause harm

[529] *Bruno Lachaux v Independent Print Ltd : Bruno Lachaux v Evening Standard Ltd : Bruno Lachaux v Aol (UK) Ltd* [2015] EWHC 2242 (QB).
[530] Justice Warby considered the meaning of S1 (1) and confirmed that libel is no longer actionable without proof of damage. Where "serious harm" is found, the subsequent damage to reputation cannot be merely presumed but must be properly proven.
[531] *Lachaux* (2015), Judgment on serious harm; A case report available online http://www.5rb.com/defamation-2/lachaux-judgment-on-serious-harm/ [Assessed 13th January 2017].
[532] Descheemaeker, E., (2015), 'Three Errors in the Defamation Act 2013', Journal of European Tort Law, Vol 6, Issue 1.

after being share or re-share. Therefore, the cause of action may not arise at the time of publication. Besides, a publication may change from being non-defamatory to being defamatory, and vice-versa. Section 1 (1), it seems that 'has caused or is likely to cause' no longer means 'has a tendency to cause' but rather 'has already caused or will probably cause in the future[533]'. The 2013 Act makes it that, 'to be recoverable' the relevant injury should either have been caused or be 'likely' to be caused by the previous event (the publication of the statement or injury to reputation). This alternative requirement is a difficult one that Parliament seems to have conflated and confused within different ideas. The injury complained of by the claimant to have been caused by the defendant, issues of likelihood removed through the operation of the 'balance of probabilities' test i.e. it must be established that it is more likely than not that the defendant's wrongful conduct was the cause of the claimant's loss.

3. Section 1 versus Freedom of Expression

The right to reputation has been drawn within the scope of Article 8 European Convention on Human Rights (ECHR) right to a private life, as affirmed in the court of justice and followed by the English courts[534]. The confusion of Section 1 raises the question 'at what stage exactly will reputational harm be considered to be serious enough to pass the threshold of seriousness engaging Article 8 of the Convention and satisfying the Section 1 requirement of serious harm[535]. Similarly, the Act does not mention a cut-off date between past 'has caused serious harm' and future 'is likely to cause serious harm'[536]. It puts an extra burden on the courts before determining seriousness of the harm.

4. Interpretation

Courts cannot change the wording of the Act but, of course, they will have to interpret it. If some injury has already been caused but it is not yet a serious injury – the wording

[533] McMahon, P., (2013), In J Price/F McMahon (eds), Blackstone's Guide to the Defamation Act 2013.
[534] *Chauvy v France* [2005] 40 EHRR 610; *White v Sweden* [2008] 46 EHRR 3; *Lindon, Otchakovsky-Laurens and July v France* [2008] EHRR 35; *Pfeifer v Austria* [2007] 48 EHRR 175; *Flood v Times Newspapers Ltd* [2012] 2 AC 273; *Joseph v Spiller* [2010] UKSC 53, [2011] 1 All ER 947.
[535] In Lachaux, S1 was described as 'a more exacting test than Jameel' but in Sobrinho the claim was struck out on Jameel grounds despite satisfying the section 1 requirement (see-7.16).
[536] Bean J identified two possibilities: the date of issue of the claim form and the date of the trial (or of the trial of the preliminary issue of serious harm). But in the Cooke case former was considered as the right approach whereas in the *Lachaux* case later was approved (see-7.16).

of the section would make no sense. An injury, which is deemed to have already occurred, cannot be likely to happen in the future. If the (serious) injury to reputation is not conclusively established from the publication of the defamatory statement, it follows logically that it may or may not have occurred at the point when the action is brought. It would be a surprising situation where a claimant might be able to sue successfully hence recovering compensatory damages, for a loss that has not yet occurred – and of course, might never occur at all.

The above analysis establishes that the Defamation Act is a piece of legislation, which protects legitimate interests and the reputation of social media users. It can be described as: 'The aspects of law which support the protection of the value of human dignity, online as well as offline[537]'. It is relatively a small Act, which maintains a fair balance between freedom of speech and privacy rights[538]. The burden lies with the defendant to establish that his statement is true or substantially true. It also tries to shift the balance between free speech and the right to reputation, in favour of free speech (see-2.17.2).

2.14.1.: What does the Act not do?

The Defamation Act 2013 is not a 'one-stop' consolidating Act because the following drawbacks remain:

1. With Section 1 and Section 9 strictness, it makes the process of serving a writ outside England very complex (see-7.3)

2. Significant parts of 1952 and 1996 Acts also remain in force and can be relevant to libel claims (see-7.4)

3. Concerning social media claims, rather than clarifying the current law, the judges may have to look at old issues afresh in light of the new statutory wording (see-7.5)

[537] Roos, A., & Slabbert, M., (2014), 'Defamation on Facebook: Isparta v Richter 2013 6 Sa 529 (GP)', PER/PELJ, Vol 16, Issue 6, pp 2843-2861.
[538] All this innovation and citizen empowerment inspired by online communications would be lost if your free speech and privacy rights do not apply in cyber-space.

4. It does not address the issue of costs, which remains a real practical obstacle for prospective litigants (see-7.6)

5. It creates uncertainty for the courts' jurisdictions over England domiciled claimants (see-7.7)

6. It does not provide any details of free speech and privacy rights. The presumption of falsity remains (the burden is on a defendant to prove a statement is true or substantially true) (see-7.9)

7. It does not provide a statutory definition of when a statement is defamatory and when the cause of action arises (see-7.14)

8. It does not seek to fully codify the existing law by setting out when a statement is defamatory, making provisions about the meaning (see-7.14)

9. It makes it harder for the victims by asking them to show serious harm (see-7.16)

10. It fails to take into consideration that certain statements published within a particular context are intended as 'meaningless-conversation' or frivolous comments. A publisher cannot use as a defence that his statement was a joke and the aggrieved is unlikely to suffer any harm (See-7.17)

11. It does not differentiate between an England based defendant or foreign defendant. Similarly, it makes it harder for British claimants (see-7.18)

12. It does not resolve the imbalance of freedom of expression and privacy rights (see-7.21)

2.15.: Liability under the Act:

Can social media users be held accountable in the same way as traditional publishers? Most of them do not have access to independent legal or editorial advice at the time they post/publish or share defamatory comments. Lack of advice also leads to numerous allegations of defamation and breach of privacy (see-7.15). However, considering the

damages of social media defamation (wide-ranging audience, character assassination and confidentiality issues) - any defamatory publisher (a blogger, professional commentator, or a random online user) must remain responsible for online postings the same as he would be for offline publications.

Can social media users be given immunity when they are not aware of the law or cannot get independent advice like traditional publishers? There is an increase in the number of social media claims since 2013[539]. In 2017[540] court heard more libel cases than previous years[541] (see Appendix-1). Therefore, social media users cannot be given immunity. Besides, judges even disregarded the argument that the material was published mistakenly, innocently, in anger or repeated the statement of a third party[542]. However, the success of the claim depends on the readership. If the number of followers of a defamatory post is low the claim may fail. It is important to note that the readers/followers of a defamatory publication must be from the community/group of the claimant[543]. Defamation law is not concerned with the impact of defendant's publication on the claimant but the impact of that publication on the people who are in his community[544]. If there are no readers the claimant may not win a libel claim[545].

2.15.1.: Liability of third party/ISP:

If the defendant is not worth suing, the claimant can also involve a third party in his claim[546] (this is beyond the scope of this thesis). The victim of defamation may justifiably argue that interactive service providers as well as chat rooms, review websites or even complaint sites, should all be liable for publishing a defamatory

[539] Pelletier, N., (2016), 'The emoji that cost $20,000: Triggering liability for defamation on social media', Washington University Journal of Law & Policy, Vol 52, pp 227.
[540] Media and Law, (2017), 'Overview of Defamation, Privacy and other Media Cases'; Available online at: https://inforrm.org/2017/12/29/media-and-law-overview-of-defamation-privacy-and-other-media-cases-in-2017/ [Assessed 12th January 2018].
[541] Wilson, B., (2018), 'Defamation/ Libel: Defamation claims up by 40% in 2017'; online Url: ttps://inforrm.org/ [Assessed 2nd June 2018].
[542] Brett, N., & Wilson, I., (2013), Defamed on Social media: Online Url http://www.brettwilson.co.uk/defamation-privacy-online-harassment/defamation/defamed-on-social-media/ [Assessed 21st April 2017].
[543] Mullis, A., & Scott, A., (2014), 'Tilting at Windmills: The Defamation Act 2013, Modern Law Review, Vol 77, pp 87.
[544] Smolla, A.R., (1983), 'Let the Author Beware: The Rejuvenation of the American Law of Libel', University of Pennsylvania Law Review, Vol 1, Issue 18; defamation claim does not provide compensation for emotional disturbance, but rather remedies a wrongful disruption in claimant life.
[545] *Lachaux v Independent Print Limited & Ors* [2015] EWHC 2242 (QB).
[546] Seidenberg, S., (2017), 'lies and libel', ABA Journal, Vol 103, Issue 7, pp 48.

statement on their web pages[547]. However, the law holds to the contrary because the Defamation Act and common law do not treat all the parties equally for social media defamation claims. For example, in most circumstances, ISPs are immune from such claims. There are circumstances where ISPs may be held responsible for promoting defamation. *The Delfi* [2016][548] case hold the ISP liable for defamation because they neglected to take technical or manual measures to prevent defamatory statements from being made public. The ISP was in a position to know about an article to be published, so could predict the nature of the possible comments prompted by it[549].

Similarly, public figures and celebrities are treated differently. This rule should also be upheld for celebrities who are mostly self-publishers[550]. For instance, Katie Hopkins has over 600,000 Twitter followers. "It is proper publishing if you have 600,000 followers and you are going on the attack against individuals[551]" i.e. she becomes a traditional publisher.

2.15.2.: Reporting to public and private figures:

The claimant who is an ordinary person just needs to prove that the defendant acted negligently (see-7.20). The court applies the 'reasonable man' test to see if a reasonable person would have understood the defamatory meaning claimed of the material (see-2.17.3). Bean J[552] used the phrase 'right-thinking people' to identify the actionable defamation.

The claimant who is a public figure has to prove actual malice[553]. Black's Law dictionary 2nd edition defined actual malice as "The deliberate intent to commit an injury, as evidenced by external circumstances". If a public figure claims that they are a

[547] Oster, J., (2015), 'Communication, defamation and liability of intermediaries', Legal Studies, Vol 35, Issue 2, pp 348-368.
[548] *Delfi AS v Estonia* [2015] ECtHR 64669/09.
[549] Callamard, A., (2017), 'Are courts re-inventing Internet regulation?', International Review of Law, Computers & Technology, Vol 31, Issue 3, pp 323-339.
[550] Edwardes, C., (2017), 'People see me as a villain-but at least I'm not a victim: She lost a defamation case to food blogger Jack Monroe but professional provocateur Katie Hopkins won't say sorry', Candid interview, Evening Standard.
[551] *Monroe v Hopkins* [2017] EWHC 433 (QB); Warby J at 10.
[552] *Cooke and Midland Heart Ltd v MGN* [2014] EMLR 31 at [43].
[553] Frederiksen, K., & Thomas, A. J., (2003), 'Celebrities testing limits of right of publicity laws', Computer and Internet Lawyer, Vol 20, Issue 2, pp 11; public figures have to show 'actual malice' that the defendant published defamatory content with knowledge of falsity.

victim of libel they must prove that defendant lied, on purpose, to hurt their image. This idea was generated in the Sullivan[554] case, where court established that public officials must prove actual malice. It may seem a difficult standard for the celebrities to prove that defendant knew that the statement was false[555]. However, once actual malice is proved, it becomes relatively easy for public figures to win a claim compared to private figures (see-7.20). As famous Harry Potter's author, J. K. Rowling, won damages and an apology from the 'Daily Mail' publisher because the allegations were "completely false and indefensible[556]".

2.16.: Who is a public figure[557]?

The definition of a public figure[558] has varied over the years. Somebody who can effectively, in a given matter of public interest, influence the determination of the case, will be regarded as a public figure[559]. Regarding defamation claims, member of Parliament, member of the royal family or a government servant can also be regarded as a public figure (see Table-8). Public figures are categorised as public officials[560] , all-purpose public figures[561], and limited-purpose[562] public figures. Along with celebrities, sports personalities and Olympians, there can also be limited-purpose public figures: (1) Deliberately participated in a discussion about public controversy (2) Media person who can spread his views across. These limited purpose figures can also attract public attention during their case trial. They are not actual public figures, but under the circumstances, they have to prove actual malice just like real celebrities (see-7.20).

[554] *New York Times Co v Sullivan* [1964], 376 U.S. 254 No. 39.
[555] Matthew J. D., (2009), 'A Newsworthiness Privilege for Republished Defamation of Public Figures', Lowa Law Review, Vol 94, Issue 3, pp 1023-1050.
[556] *Murray v Associated Newspapers Ltd* [2014] EWHC 1170 (QB).
[557] Corporations are not always public figures. They are judged by the same standards as individuals.
[558] Wealthy foreign business people and celebrities using English courts to sue (mainly the US) publishers.
[559] Rooksby, J. H., (2018), 'Gain insight into preventing, addressing claims of defamation', Campus Legal Advisor, Vol 18, Issue 6, pp 1-5.
[560] It includes government officials, politicians and public servants.
[561] An "all-purpose public figure" is someone whose fame or position regularly puts them in the public eye. Celebrities, sports stars, and the heads of well-known companies are often all-purpose public figures.
[562] Rukundo, S., (2018), ''My President is a Pair of Buttocks': The limits of online freedom of expression in Uganda', International Journal of Law and Information Technology, eay009, Issue 0, pp 1–20; Dr Nyanzi can be classed as limited public figure because of her 14000 Facebook followers and her reputation for tincturing her incisive socio-political analyses with graphic sexual imagery and descriptions; a limited-purpose public figure has to prove 'actual malice' when a statement applies to her involvement in their topic or issue, but not when a statement refers to her personal life.

Many commentators[563] argue that most of the celebrities, sports personalities and public figures are the initiators of libel tourism[564]. It has been easier for celebrities to sue for defamation in the UK because English laws on libel have traditionally favoured the claimants. In the McLibel case[565], the European Court of Human Rights also highlighted that the burden on defendants in English courts was too high. In 'common law' libel claims, the burden of proof is on the defendant; however, the case of Sullivan[566] changed this traditional feature in the US. Supreme Court decided that if a public figure is libelled the burden of proof would be on the claimant. This Chapter recommends that a similar provision should be added to the Defamation Act 2013 that a public figure must prove actual malice to collect compensatory damages (known falsity or reckless disregard for the truth). On the contrary, an ordinary user must only prove negligence (not using due care) to collect compensatory damages. However, about punitive damages, all individuals must prove actual malice. Otherwise, the issue of libel tourism cannot be reduced and freedom of speech cannot be guaranteed.

2.17.: Libel Tourism:

> "Any person has the right to the freedom of expression, right which includes the freedom of opinion and to receive or communicate information or ideas without the interference of public authorities and without taking into account the borders – Art 10[567]".

The rules of jurisdiction are not there to provide litigators with their preferred forum because the intention is to find the most suitable forum. This causes an issue of libel tourism because people opt to choose their most favourable forums. It is argued[568] that the UK is unable to protect freedom of expression and free speech because of concerns

[563] Davies, D., (2006), 'US celebrities 'sue in Britain for better chance of winning', The Telegraph: Online Url http://www.telegraph.co.uk/news/1525902/US-celebrities-sue-in-Britain-for-better-chance-of-winning.html [Assessed 21st April 2017].

[564] There are many examples: *Kate Beckinsale v Daily Express; Russell Brand v The Sun; Tom Cruise v Daily Express*; all celebrities used English court to bring libel claims.

[565] Gibson, J., (2015), 'From McLibel to e-Libel: Recent issues and recurrent problems in defamation law'; Online Url: http://www.districtcourt.justice.nsw.gov.au/Documents/Speeches/From%20McLibel%20to%20e-Libel%20(correction)%20-%20Recurring%20problems%20in%20Defamation%20Law.pdf [21st March 2018].

[566] *New York Times v Sullivan* [1964] 376 U.S. 254.

[567] Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms [1950] - European Court of Human Rights (ECHR, 2009) stated that the Internet archives are subject to article 10.

[568] Libel Tourism, The Guardian, https://www.theguardian.com/uk/2010/mar/10/boris-berezovsky-case-libel-tourism; MacManus, E., (2009), 'Will British libel law kill net free speech?', open Democracy http://www.opendemocracy.net/article/email/will-net-free-speech-survive-british-libel-litigation [Assessed 13th January 2019].

over libel tourism[569]. The UK had been renowned for defamation tourism because of lenient libel laws[570]. For instance, a Saudi claimant[571], who did not have any direct link (contentious connection) in the UK, successfully sued an American researcher in the UK. This claim could not have succeeded in the US because only 23 copies of American Writer were bought online. Similarly, there are many English court cases against US defendants who would not have succeeded in the US. It caused the US authorities to introduce the Speech Act 2010, which makes foreign online defamation judgments unenforceable if the decision is inconsistent with US laws.

In the *Alvaro*[572] case, a Portuguese national successfully brought a libel case against a Portuguese newspaper. Once again the readership of that newspaper was negligible in the UK. The English court could not stop this claim on the grounds of libel tourism because of EU supremacy and because Portugal is an EU member state. The UK had automatic jurisdiction because English judges had to apply 'law of the place of injury' for EU nationals. However, after the completion of Brexit by 2019, the UK courts may be able to cap libel tourism. Even before Brexit, the Defamation Act 2013 may have offered a partial approach to help prevent 'libel tourism' under S9 (see-7.8). However, in this case, it becomes hard for the British claimant to peruse a claim in England (see-7.8, 7.12) despite England being the natural forum to bring the proceedings.

2.17.1.: Natural forum:

An English court can only prosecute a foreign defendant if England is the natural forum to give judgment otherwise the court will not have personal jurisdiction. The tests to find an appropriate forum are detailed later (see-6.9). However, the concept of the 'natural forum[573]' is based on two terms: 'Forum conveniens' and 'forum non-conveniens' (see-2.72). These terms are important in explaining private international law rules related to the service abroad provisions and jurisdictional provisions. The

[569] Alleyne, R., (2008), 'British libel laws stifle free speech, claims UN', Daily Telegraph (London) http://www.telegraph.co.uk/news/2556244/British-libel-laws-stifle-free-speech-claimsUN.html [Assessed 6th March 2018].
[570] Brid, J., (2011), 'The Modernization of English Libel Laws and Online Publication', Journal of Internet Law, Vol 14, Issue 7, pp 3.
[571] *Prince Al-Waleed v Forbes* [2014] EWHC 3823 (QB).
[572] *Alvaro Sobrinho v Impresa Publishing SA* [2016] EWHC 66 (QB).
[573] The natural forum is within which the action has the most real and substantial connection. It resolves the dispute for the interest of all parties to the ends of justice.

standard of refusing to exercise jurisdiction or displace claimants preferred jurisdiction is very high on 'forum conveniens' basis.

Concerning online defamation, this idea is also reinforced by Section 9, which requires the court to consider all the factors to achieve the twin goals of efficiency and justice. The challenge of 'forum non-conveniens' is brought early in the proceedings i.e. it allows the court to adopt a prudent, not an aggressive, approach to fact-finding[574]. This thesis will refer these two terms as 'forum conveniens'; however, there are basic differences in the contexts these terms are applied:

2.17.1.1.: Forum non-conveniens:

It is a test for defendants. If proceedings have been commenced against a defendant, who is also present in England at the time of trial. It allows the defendant to request the court not to exercise its jurisdiction. The foreign defendant can claim that England is not a suitable forum to try this case (see-2.7.2). If the defendant challenges court jurisdiction using this test, the burden of proof is on the defendant to prove that England is not a suitable forum (see-6.9.1). The challenge must be lodged in court quickly and before the defendant takes any other steps to defend the claim (see-2.12.3). If the defendant takes any steps to defend, it will be sufficient to establish that the defendant submits to English court's jurisdiction (see-6.8.2). The court will have to stop earlier proceedings and consider the defendant's challenge (see-6.2.2). The defendant must convince the judge that the court has no jurisdiction over him, or even if it has jurisdiction, it should not exercise it (see-6.9.1.2).

2.17.1.2.: Forum conveniens:

It is a test for the claimants. It allows a claimant to request the judge to start proceedings against a defendant who is not present in England. The claimant has to satisfy the judge that England is most suitable jurisdiction to try this case (see-6.9.1.2). The burden is on the claimant to prove a connection between the dispute and England (see-6.2.1). This common law criterion of forum conveniens is somewhat subjective because courts may only decline its jurisdiction if prosecution in England may prove

[574] *Curves International, Inc. v Archibald* [2011] NSSC 217; on some occasions, the efficiency and fairness considerations at the heart of this forum test will be tied inextricably to the factual issues in dispute.

inconvenient, unjust, or ineffective[575]. The relevant factors[576] a judge may consider to determine forum are:

1. Matters affecting convenience and expenses
2. The place of domicile of the parties
3. The place where relevant events occurred
4. The location of witnesses
5. The legitimate personal/juridical advantages accessible by the claimant in the jurisdiction which would not be available in other states[577]

Therefore, it can be established that jurisdiction in England depends upon the link between defendant's activity, forum, and litigation. However, if the defendant has no link in or he is not resident in England, then the factors for personal jurisdiction are[578]:

1. Defendant: Physical presence in England is compulsory
2. Claimant: Must show that the defendant has been served in England or he purposefully directed his activities in England
3. Court: Must verify if service of a writ is proper. If court uses its statutory discretion to assume jurisdiction, it must be by the notions of fair play and substantial justice

2.17.2.: The burden of proof:

For an online user who is alleged to have published a defamatory statement, his 'intent' and good faith become irrelevant (see-7.15). Judges will apply the reasonable man test to identify whether other social media users would understand these words as defamatory (see-2.17.3). A defamatory article re-shared mistakenly, unknowingly or even accidentally would also fall into the same category if the claimant's reputation was harmed (see-7.20). On the contrary, if the shared statement is a 'statement of fact' the victim cannot succeed in his claim because the alleged statement is true. The defendant

[575] Obdulio, C., (2005), 'Jurisdictional Problems in Cyberspace Defamation', International Law, Vol 6, pp 247-300.
[576] Roilliard, B., (2007), 'Jurisdiction and choice of law rules for defamation actions in Australia following the Gutnick case and the Uniform Defamation Legislation', Australian Int'l Law Journal, Vol 14, pp 185.
[577] Collins, M., (2005), 'The Law of Defamation and the Internet', (2nd Ed, Oxford Uni Press), pp 334.
[578] Gladstone, J., (2003), 'Determining Jurisdiction in Cyberspace: The "Zippo" Test or the "Effects" test?', Informing Science, pp 143-156.

has to establish that the published statement is a true statement of facts, because the burden of proof is on the defendant[579].

In England, the general rule is that the defendant bears the burden of proof in defamation cases (see 5.9.1.1). It is notable that in most common law countries courts allow the benefit of the doubt in favour of the defendant. In criminal matters, the accused is presumed innocent until proven guilty beyond the reasonable doubt. Under civil law, the defendant is presumed innocent until the claimant can show liability, 'on a balance of probabilities[580]'. The Defamation Act 2013 introduced a reverse-onus feature regarding forum test (see-2.17). However, concerning the alleged statement, the defendant bears the burden of proof[581] to prove that his statement is true[582]. Defamatory content is presumed to be false until the defendant can prove it is true (see 5.9.1.1). However, regarding public figures, the burden of proof is on the claimant as opposed to the defendant (see-2.16). As far as the meaning of defamatory words is concerned, the courts use the standard of a reasonable man.

2.17.3.: Reasonable man:

According to Greene LJ, a 'right-thinking' member of society is only required to have an average set of values[583]. The reasonable man is a hypothetical reasonable reader and there is no prescription of how such a reader should attribute meanings to words. Sir Anthony[584] established that a 'reasonable man could read between the lines'. He should not select one bad meaning when other non-defamatory meanings are available. Tugendhat J[585] noted that if there are, two possible meanings, the court should determine less or more derogatory meaning by reference to what the hypothetical reasonable reader would understand in the circumstances. Warby J[586] noted that the

[579] Samson, E., (2012), 'The Burden to Prove Libel: A Comparative Analysis of Traditional English and U.S. Defamation Laws & the Dawn of England's Modern Day, Cardozo Journal of International and Comparative Law, Vol 20, Issue 3.
[580] *British Chiropractic Association v Simon Singh* [2009] HQ 08X0265.
[581] *Seaga v Harper* [2009] UKPC 26; *Bonnick v Morris* [2003] 1 AC 300.
[582] Hall, E., & Malanga, S., (2017), 'Defamation lawsuits: Academic sword or shield?', EMBO Molecular Medicine, Vol 9, Issue 12, pp 1623-1625; Nature, (2009), 'Unjust burdens of proof', Vol 459, Issue 7248, pp 751-751.
[583] *Byrne v Deane* [1937] 1 KB 818.
[584] *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 at [14].
[585] *McAlpine v Bercow* [2013] EWHC 1342 (QB) at [66].
[586] *Monroe v Hopkins* [2017] EWHC 433 (QB) at [51].

judge's task is not to impose personal views and Clarke[587] emphasised that a judge must be neutral and cannot lean towards one direction[588] when identifying meanings (see Appendix-V). Laws LJ[589] held that court cannot assume the position of a reasonable reader. It is not for the judge to interpret the meaning as Eady J[590] concluded that the essential core of the libel must be isolated to avoid being distracted by inaccuracies around the edge. There is an exception to this rule (when decoding the meanings of 'political speech') but it depends on the judge's discretion. Longmore LJ[591] determined that if the speech is political, it does not require any special approach to deciding its meaning. The court might have to give appropriate protection to political speech, without distorting well-established principles about the meaning of words[592].

2.18.: Summary:

In social media defamation, a new tort will be committed in every country, where this defamation is viewed/re-published i.e. a number of different rules will be applicable for a single defamatory publication through social media. This multi-state defamation can be resolved by applying the law of the country where the claimant has suffered the most damage. However, it may not be convenient unless the choice of law rules are harmonised i.e. a Facebook post about degrading Israel can only be appropriately resolved by applying Israeli laws because other states' laws may not provide same protection. The internet has posed various unresolved challenges for the application of law based on national jurisdictions or international law.

Private international law provides a solution to such international conflicts because it allows a dispute to be resolved by applying the proper (foreign) laws. It asks the two basic questions: (1) where the defamatory content was published and (2) where it affects the reputation the most. However, there can be ideological differences in conflicting states' laws.

[587] *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130; Principle (2): A neutral approach by Anthony Clarke MR.
[588] It is not a Judge's task to find a publication's single meaning to choose one putative meaning over another on the footing that the former contains more of a defamatory sting than the latter.
[589] *Simpson v MGN Ltd* [2016] EWCA Civ 772 [2016] EMLR 26 at [15].
[590] *Turcu* [2005] EWHC 799 at 105.
[591] *Thompson v James* [2014] EWCA Civ 600 [26] [27].
[592] *Barron v Vines* [2016] EWHC 1226 (QB) at [86].

2.19.: Research Questions:

From the critical analysis of the relevant literature, the following questions emerged:

(1) HAS CYBERSPACE CHANGED THE APPLICATION OF PRIVATE INTERNATIONAL LAWS BY DISINTEGRATING THE DOMINANCE OF TRADITIONAL SOVEREIGN STATES?

(2) IS THE EXISTING LEGAL FRAMEWORK ADEQUATE TO DEAL WITH CIVIL DISPUTES (DEFAMATION) BASED IN SOCIAL MEDIA?

2.20.: Conclusion:

Anonymity, invisibility and 'geographic indeterminacy' give rise to the legal issues of 'applicable laws' and 'conflicting jurisdiction'. No legal framework is agreed to resolve this challenge because the choice of law issues are mostly related to non-commercial transactions. The internet was allowed to prosper under the collaboration of governments, civil societies and the private sector. Hence, it has developed as an economic engine and a social force so an international legal framework for the internet depends on the harmonisation of domestic laws and social practices. Similarly, the differences in interpretation of local laws have left many gaps in areas of international practices. Defamation and privacy, freedom of speech, intellectual property rights, data protection and e-commerce are few of these areas. Thus, an agreement for the global policing of the internet is made impossible because of cultural and social differences[593]. The internet continued to prosper and became a powerful socioeconomic tool. However, there has been very little modification in the 'conflict of laws'. To date, there is no such mechanism, which can establish the physical presence of an internet user. This chapter concludes that the internet will keep posing unresolved challenges unless the issue of national jurisdiction is solved. Based on the fact 'an act which is illegal offline is also illegal online' the courts may apply existing laws to internet disputes and the policymakers can adopt the laws, which need further clarification[594]. However, the main issue here is not just jurisdiction, but also government's role in the governance of critical internet resources[595].

[593] Bhuiyan, A., (2014), 'Internet governance and the global south: Demand for a new framework', (1st Ed, Palgrave Macmillan, London), pp 1-19.
[594] Hill, R., (2014), 'The Internet, its governance, and the multi-stakeholder model', Info, Vol 16, issue 1.
[595] Hill, R., (2014), 'The Internet, its governance, and the multi-stakeholder model', Info, Vol 16, issue 1.

CHAPTER 3

JUSTIFICATION OF METHODOLOGY

This chapter evaluates academic justification of using ‘black-letter law’as a methodology for this thesis.

3.1.: Historical Review:

> "In protecting the Internet presence in our lives, we need to be no less creative than those who invented it. There is a need for governance, but that does not necessarily mean that it has to be done traditionally, for something that is so very different."
> Kofi Annan[596]

In legal facilities, the basic methodology is 'doctrinal research'[597] because it is a traditional approach and named 'black-letter methodology[598]'. It adopts a legalistic approach in which the study is solely based on the 'letter of the law[599]'. Researchers use personal interpretation to determine the content of a given law at a more fundamental level than legal standards[600]. It is also associated with 'positive legal research (law is what the law says)', because traditional legal methodology does not question the morality of law but only examines the effectiveness of a particular field of law in a given society[601]. It aims to reduce the research on a legal issue to an essential, descriptive analysis of a vast number of technical and coordinated legal rules, which can be found from the primary sources[602].

3.2.: The aims of legal doctrine:

Smith[603] noted that legal research tends to focus on the nature of law, the effect of law on society and 'excels' at answering the normative question of what law ought to be. Therefore, for social media and jurisdiction issues, 'doctrinal research' provides a systematic exposition of the rules governing a specific area of libel. It analyses the

[596] The UN Secretary-General's remarks at the opening session of the Global Forum on Internet Governance on March 24, 2004; www.un.org/sg/STATEMENTS/index.asp?nid=837 [Assessed 14th January 2017].
[597] Gawas, V. M., (2017), 'Doctrinal legal research method a guiding principle in reforming the law and legal system towards the research development', International Journal of Law, Vol 3, Issue 5, pp 128-130.
[598] 'Doctrinal research' refers to a distillation of the common law into general and accepted legal principles.
[599] Cahillane, L., & Schweppe, J., (2016), 'Legal Research Methods: Principles and Practicalities', (1st Ed, Clarus Press), Ch. 2: Doctrinal Analysis: The Real 'Law in Action'.
[600] Greenberg, M., (2017), 'What makes a method of legal interpretation correct?: legal standards vs fundamental determinants', Harvard Law Review, Vol 130, Issue 4, pp 105-105.
[601] Carolienea, V., (2017), 'Research Methods: Doctrinal Methodology', ASC LLM Support – UWE; available online at www.uwe.com [Assessed 14th August 2015]; Law is part of society because it influences the way people behave but it is also simultaneously created by social behaviour and actions.
[602] Jacobstein, J.M., & Mersky, R.M., (2001), 'Fundamentals of legal research', (1st Ed, Foundation Press, UK), pp 1; the primary sources in a legal research includes, statutory materials, reports of committees, legal history, judgments, law reports, case law and digest.
[603] Smits, J., (2012), What Do Legal Academics Do? Elgar blog; online Url http://elgarblog.wordpress.com/2012/08/15/what---do---legal---academics---do/ [Assessed 14th July 2018].

relationship between regulations and identifies difficulties in application. It also helps in predicting future developments in the chosen field[604]. It serves three different goals in any legal research[605]:

1. The *lex lata* (law as it exists)
2. The *lex ferenda* (what law should be)
3. Justification (justification for the existing law)

3.2.1.: Description:

One of the aims of using a legal doctrine is that it describes the existing law in a: (1) certain field (tort of defamation in this thesis) or (2) concerning an institution (libel and freedom of expression). However, this description should be neutral and consistent to inform the audience how the law reads. Use of legal research in this thesis describes the existing system of law in social media libel (it can be highly creative[606]).

3.2.2.: Prescription:

In any field of law, legal doctrine is not limited to a mere description and understanding of existing law. It also comprises a search for practical solutions, which may fit into the current system (see-8.5, 9.4). A prescriptive approach reflects normativity of existing law, so it is associated with decision makers (legislators, judges and courts), rather than the executive[607].

3.2.3.: Justification:

The third aim of legal research can also serve as a justification for the existing law i.e. if a rule does not fit into the system, it is not law (Section 1 of the Defamation Act 2013-

[604] Pearce, D., Campbell, E., & Harding, D., (1987), 'Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission', [Canberra: Australian Government Publishing, Australia], pp ix.
[605] Smits, J.M., (2015), 'What is legal doctrine? On the aims and methods of legal-dogmatic research', Maastricht European Private Law Institute, M-EPLI, Working Paper No. 2015/06.
[606] Bentham, J., (1970), 'An Introduction to the Principles of Morals and Legislation' in (eds); Burns, J.H., & Hart H.L.A., (Clarendon Press, Oxford), pp 21.
[607] Minow, M., (2013), 'Archetypical Legal Scholarship: A Field Guide', Journal of Legal Education, Vol 63, pp 65; for an academic researcher, if the law is about norms for human behaviour, legal doctrine will articulate what these norms are.

whether serious harm may have the same meaning in social media as compared to ordinary libel cases). Here, the essence of internal perspective comes out best: If the law is presented as a self-contained system of mutual reference, the validity of norms can be justified by reference to this system[608]. For instance, if the Defamation Act is suitable for online libel then it must be applied to modern social media communication. Legal doctrine then allows proposing suitable solutions, which may fit in with the system that is used by the legal community (see-9.5).

3.3.: Use of legal methodology:

In common law, black-letter doctrine includes the basic principles of law accepted by the courts and embodied in the statutes of a particular jurisdiction. Many legal practitioners, judges, academics and legal researchers adopt doctrinal legal approach[609], although Conville and Chui[610] argue that the professional approach must be distinguished from the researchers.

3.3.1.: Professionals versus academics:

When judges decide a case there could be various factors, which may have an impact on the decision. These factors may include media, pressure groups, public sector, views expressed by private organisations, influential society values, foreign policies, political agenda and the viewpoint of international institutions[611]. Especially when the decision lacks the formal authorisation of international law; for instance, when a case is decided on genocide then international conventions and United Nations treaties must be adhered. These factors can influence the decision but also increase the legitimacy and authority of a particular judgment. Simialrly, a judgment which incorporates the ruling of the Court of Justice of the European Union (CJEU) will set a precedent within the UK and may not be further challenged in the English Courts. However, being a

[608] Pattaro, E., (2005), 'Legal Reasoning: A Cognitive Approach to the Law', (5th Ed, Springer), Ch.1 – Legal Doctrine and Legal Theory, pp 4-6.
[609] The letter of the law is its actual implementation, thereby demonstrating that doctrinal researchs are those statutes, rules, acts, laws, provisions, etc. That is or has been written down, codified, or indicated somewhere in legal texts throughout history of specific state law.
[610] McConville, M., & Chui, W., (2001), 'Research methods for law', (Antony Rowe Ltd, GB), pp 12.
[611] Lundmark, T., & Waller, H., (2017), 'Using statutes and cases in common and civil law', Transnational Legal Theory, Vol 7, Issue 4, pp 429-41.

researcher, such factors should not jeopardise the findings in a thesis[612] because a researcher must not be influenced by ethnic, social or moral values. Moral and political discussions must be marginal to the dissertation because a researcher is not under judicial pressure as a judge in a court of law could be.

Legal methodology may be 'doctrinal research' for judges, jury and academic researchers; however, the method of judicial application is not the same because both are serving profoundly different tasks[613]. Judge sees things inductively to decide a case (considering the arguments provided), whereas scholars play a role in developing the system but methodological constraints ideally bind them. Legal researchers are free to make suggestions and recommendations for future laws, whereas the judiciary implements existing law. Hence, it can be established that practical implication and theory of law are different. The judge's task requires vast knowledge and ability to organise fragmentary and rebarbative material, whereas legal scholars have to be intellectual to analyse and review. Legal practice and research may be using the same language but they serve different purposes and they have radically different audiences[614].

Briefly, in black letter methodology, a researcher focuses on law in the statute books rather than law in practice. Therefore, the impact of geographical, sociological and political implications in the research thesis must be minimal to produce an impartial theoretical study.

3.4.: Significance of legal methodology:

Legal research enables the legal system to function effectively because black letter methodology aims to recommend solutions to existing societal problems or solve problems in an enhanced way[615]. The above analysis explains the use of black-letter doctrine in the application of the law and research in the field of law. The academic researcher seeks an understanding of how the law works and how it affects society, thus

[612] Rose, K., & Pryal, G., (2011), 'A short guide to writing about law', (Longman Publisher, US), pp xv.
[613] Posner, R. A., (2007), 'In Memoriam: Bernard D. Meltzer', University of Chicago Law Review, Vol 74, pp 437.
[614] Peczenik, A., (2005), 'knowledge of the law' in Enrico Pattaro (eds.), A Treatise of Legal Philosophy and General Jurisprudence, Vol 4, pp 2.
[615] Shrestha, M., (2008), 'Importance of legal research method for legal professionals', (Kathmandu School of Law, LLM dissert.), pp 1.

piloting a comprehensive study towards drawing valid conclusions and making suggestions on how to improve the code in the form of critical pieces of work. Similarly, this thesis will adopt this methodology to clarify the current jurisdictional confusion where it applies to social media defamation.

3.4.1.: Definition of Black Letter:

There is no standard definition of 'black-letter law' as the nature of legal doctrine has been studied less because of social science methodologies[616]. The traditional view of the 'black-letter' approach is: "Regard the law as a set of legal rules derived from cases and statutes, which are applied by a judge who (theoretically) must act as a neutral and impartial referee seeking to resolve a dispute[617]". It is a limited definition because it does not seem to accord with the reality of a massive field of law. It has nevertheless been remarkably persuasive[618]. This traditional view[619] refers to such basic principles in the field of law that are agreed by the majority of practitioners as being rigid principles.

In short, the legal method would require a researcher to:

1. Identify the relevant source of law (see-4.2.1)
2. Summarise cases and statutes (see-7.2)
3. Classify and distinguish between different precedents (see-7.3 till 7.21)
4. Manipulate the elasticity of existing legal doctrine to rhetorically justify the legally correct result (see-9.2)

3.4.2.: Is 'black letter' the appropriate method?

BDoctrinal research is a more appropriate methodology for conducting legal research in cyberspace. A crucial aspect of 'legal dogmatic' approach is that it is able to accommodate new developments such as recent case law and legislation against the

[616] Emerson, H. T., & Frank B. C., (2006), 'What is legal doctrine?', North-western University Law Review, Vol 100, pp 517.
[617] Smits, J. M., (2015), 'What is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research'; in Gestel, R., Micklitz, H., & Edward L. R., (eds.), 'Rethinking Legal Scholarship: A Transatlantic Dialogue, New York', Cambridge University Press 2017; Maastricht European Private Law Institute Working Paper No. 2015/06.
[618] Fox, M., & Bell, C., (1999), 'Learning Legal Skills', (1st Ed, Blackstone Publication, London), pp 9
[619] The core principles of law accepted by the courts or embodied in the statutes of a particular jurisdiction.

background of societal change. This thesis will explore whether the Defamation Act 2013 is suitable enough for the relatively new communication medium of social media. If it is, it can be concluded that cyberspace does not outdate jurisdictional defamation laws.

3.5.: Justification of legal methodology:

This chapter aims to obtain a better understanding of doctrinal legal methodology. Many law schools are merging with 'business schools', where scholars adopt social science methodologies. This blending of business and law has hindered the growth of legal methodology i.e. despite the persistence of using 'legal research' we are insufficiently aware of its exact nature[620]. There is a misconception that legal approach provides a separate mode of thinking about law. This chapter will prove that proponents of legal methodology may have too little awareness of its foundations to criticise its use. It is only possible if 'what legal researchers work in law is really about' is understood by other disciplines. The usual counterargument is that the only reason to do this would be for the benefit of outsiders, while the argument that legal academics themselves know very well what they are doing cannot be accepted. Even if it is true that legal researchers know what they do, this knowledge is only very implicit[621].

To justify the black letter as an appropriate methodology for this thesis, it is necessary to compare it with other suitable methods. This comparison is only possible if the terms 'methods and methodology' are defined correctly.

3.5.1.: What is the methodology?

In social science research, methodology is defined as how to collect the data that relates to a particular problem, whereas method is the way of collecting that data (see-1.8). For instance, in social science,'qualitative research' is a methodology, which uses the method of 'interview' to collect data. Similarly, 'quantitative research' is a

[620] Gestel, R.V., & Wolfgang, M.H., (2014), 'Why Methods Matter in European Legal Scholarship', European Law Journal, Vol 20, pp 292; Edward L. R., (2010), 'Legal scholarship' in Dennis Patterson (eds.), A Companion to Philosophy of Law and Legal Theory, (2nd Ed, Wiley-Blackwell, Oxford), pp 548; Rubin, E. L., (1988), 'The practice and discourse of legal scholarship', Michigan Law Review, Vol 86, Issue 8, pp 1835-1905.

[621] Hutchinson, T., & Duncan, N., (2012), 'Defining and Describing What We Do: Doctrinal Legal Research', Deakin Law Review, Vol 17, pp 83-99.

methodology and the 'survey/ questionnaire' are the method. In contrast, the question of research method and methodology in typical legal research is very limited[622] because black-letter in itself is a method of legal methodology. Therefore, in conventional legal research 'method' and 'methodology' are the same (see-1.9).

Burton and Dawn[623] also noted that the term 'method' and 'methodology' are frequently used when discussing legal research but they imply the same meaning. In scientific research, they may have different meanings but in legal studies, they are used interchangeably. Without using lengthy definitions, the writers[624] argue that a legal method is a single method with a defined characteristic or characteristics, whereas in contrast, methodology is used to mean a collection of methods. Hence, black letter methodology can be either explanatory[625], empirical[626], hermeneutic[627], exploring[628], logical[629], instrumental, or evaluative[630].

3.6.: Types of methodology:

Hutchinson and Duncan[631] outlined four main avenues of research to consider in legal scholarship. These are empirical, non-doctrinal, qualitative and quantitative, and legal comparative method[632]. *This chapter will highlight other types of methodologies for the sake of analysis and outline differences between chosen methodology for this study.*

Empirical research : In this research, information is obtained from observation, experience or experimentation[633]. Knowledge gained comes from experience rather than

[622] McDermott, M., (1996), 'A View from the Coalface', Socio-legal Newsletter, Vol 5, Issue 38.
[623] Mandy, B., & Watkins, D., (2013), 'Research Methods in Law', (Routledge , London), pp 23- 64.
[624] Kunz, C.L., & Downs, M.P., (2004), 'The process of legal research', (Aspen Publishers, NY), pp 438.
[625] Explaining the law, for instance by diverging historical backgrounds in comparative research.
[626] Identification of the valid law, determining the best legal means for reaching a certain goal.
[627] A simple interpretation or argumentation.
[628] Looking for new, possibly fruitful paths in legal research.
[629] Coherence, structuring concepts, rules, principles for the purpose of comparing legal systems.
[630] Testing whether rules work in practice, or whether they are in accordance with desirable moral, political, economic aims, or, in comparative law, whether a certain harmonisation proposal could work.
[631] Hutchinson, T., & Duncan, N., (2010), 'Defining what we do: Doctrinal Legal Research', (City University London, UK), Chapter 3.
[632] Sadl, U., & Olsen, H. P., (2017), 'Can quantitative methods complement doctrinal legal studies?: Using citation network and corpus linguistic analysis to understand international courts', Leiden Journal of International Law, Vol 30, Issue 2, pp 1-23.
[633] Adler, M., & Simon, J., (2014), 'Stepwise Progression: The Past, Present, and Possible Future of Empirical Research on Law in the US and the UK', Journal of Law and Society, Vol 41, Issue 2, pp 173–202.

from theory or beliefs[634]. In effect, the non-doctrinal law[635] uses (possibly with other methods) empirical means instead of pure doctrinal means. This is most often in research requiring mixed research methods[636] i.e. multi-method research of qualitative and quantitative methodologies.

These methods depend on the type of research whether there is a requirement to use statistics to analyse the data. The question to ask is known as "the quantitative versus qualitative" question. According to Saunders[637], "understanding the research philosophy and understanding the factors of quantitative versus qualitative approach, can help improve the thought process from which the research focuses their analysis." In effect, using a qualitative approach means the research is viewed more subjectively, whereas using quantitative data allows a more objective view to be taken. It can be argued that in quantitative research, the viewpoint of the researcher is purely to gain results by numbers. If the researcher has any input, the validity of the results may be compromised.

Science and social science researchers (including business researchers) often use quantitative methods in their research, as do legal researchers who take part in combined studies such as law and economics or law and sociology. However, it is rare when studying pure law to use such methods because the nature of law tends not to lend itself very well to quantitative analysis (for instance, collecting statistics of the number of people who think the 2013 Act is inappropriate for online communication is not legal research). Although the law does not use research methods prevalent in other fields of study, it cannot be established that it does not have its research methods or indeed its own research philosophies[638]. Hence, it is pivotal to understand the primary sources a researcher can utilise to conduct legal research because these sources become the methods of a legal research approach.

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[634] Amsbury, D., (2015), Penn State university, available online at: https://www.libraries.psu.edu/psul/researchguides/edupsych/empirical.html [accessed 14th March 2018].

[635] In a non-doctrinal legal research, the researcher tries to investigate through empirical data how law and legal institutions affect or mould human attitudes and what impact on society they create i.e. are laws suited the society in which they operate; are the legal institute serving the needs of society etc.

[636] Mixed methods research is more specific in that it includes the mixing of qualitative and quantitative data.

[637] Saunders, M., Lewis, P., & Thornhill, A., (2012), 'Research Methods for Business Students', (Longman & Pearson, London), pp 26.

[638] Hutchinson, T., & Duncan, N., (2010), 'Defining what we do: Doctrinal Legal Research', (ALT, City University London, UK), pp 39.

3.7.: Primary sources of legal research:

In the legal arena, there is a dilemma of choices that lie between two worlds: 'Academia or practice', 'black letter or socio-legal', 'doctrinal or empiricism'[639]. Many fields, both in sciences and social sciences, do not recognise traditional doctrinal law methodology as a valid methodology[640]. According to legal scholars[641], black letter is the recognised methodology, which helps to fill in the gap in understanding of the 'law in action' (see-1.9.2, 9.4).

A similar line can be argued about primary tools because the primary sources of law are cases and statutes whereas this is viewed in science and social science research as secondary data[642]. Torstein Eckhoff[643] postulates that there are many sources of law and secondary sources must not be overlooked. As well as taking journal articles and travaux preparatoires[644], for example, into account he added a more comprehensive list of secondary resources, which also included "the nature of things"; legal practice and foreign law[645].

In common law jurisdictions, legal rules are to be found in the statutes and constitutions, which are crafted in the aftermath of particular problems. These statutes are not created to provide a detailed statement of the law for that particular situation[646]. Further explanation is ascertained by applying the relevant legal rules to the emerging situation under consideration[647]. For instance, Section 1 of the Defamation Act 2013

[639] Tranter, K., (2015), 'Citation Patterns within the Australian Law Reform Commission Final Reports 1992-2012', University of New South Wales Law Review, Vol 38, Issue 1, pp 318.
[640] Hutchinson, T., (2015), 'The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law', Erasmus Law Review, Issue 3, pp 130-138.
[641] Salter, M., & Mason, J., (2007), 'Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research', (1st Ed, Pearson), pp 31.
[642] Serpe, A., (2009), 'Realism vs Idealism: Paths of a dispute upon Law and human rights', University of Naples Federico LR, Vol 16, Issue 1, pp 126-154.
[643] Eckhoff, T., (1976), 'Guiding standards in legal reasoning', Current Legal Problems, Vol 29, Issue 1, pp 205-219.
[644] The 'travaux preparatoires' are official documents, which records the negotiations, drafting, and discussions during the process of creating a treaty. These documents may be consulted and taken into consideration when interpreting treaties.
[645] Aleksander, P., (2000), 'An Unsolved Philosophical Problem', Ethical Theory and Moral Practice, Vol 3, Issue 3, pp 273-302.
[646] Chynoweth, P., (2008), 'Legal Research, Chapter 3, available online at: http://www.sps.ed.ac.uk/__data/assets/pdf_file/0005/66542/Legal_Research_Chynoweth_-_Salford_Uni..pdf [Assessed 18th July 2017].
[647] Card, R., (2002), 'The Legal Scholar', The Reporter: Newsletter of the Society of Legal Scholars, Vol 25, pp 5-12.

uses the terminology of 'serious harm'; however, in social media harm may be in different forms (see-7.16). This interpretation of a particular law may only be justified by understanding the philosophy of legal research.

3.8.: Philosophy of legal methodology:

Legal doctrine is normative by nature because it is based upon what is considered the correct, standard, or "normal" way and researchers look for this in their analysis. Enrico Pattaro[648] outlines the philosophy of legal doctrine that the whole basis of legal research is to ensure correct application and more importantly consistent application of the law. It is often thought that the doctrinal law is only of use to legal practitioners. Gerald-Postema[649] has put forward the view that jurisprudence is a practical philosophy. He postulated that 'philosophical jurisprudence is in the first instance a practical, not a theoretical study. It is a branch of practical philosophy; the normative research comes from observing people engaging in living and functioning in the world'. It is not about what a participant believes about it. Dworkin[650] argued that legal philosopher differs from the practitioner, as the practitioner does not ask the moral question of "what should be done". However, there are similarities in methods as philosophers and academic researchers and practitioners are studying by using normative research. In effect, all doctrinal research asks normative questions which justifies the application of blackletter law in social media libel.

3.9.: Academic justification of legal methodology:

There are several options to consider before choosing the appropriate legal methods to use. Again, it is dependent upon the aims of the research. The options include doctrinal law, comparative law and mixed methodology as well as using more science-based research methods such as quantitative analysis, if appropriate. However, an overwhelming number of legal scholars (and practitioners) use doctrinal law.

[648] Pattaro, E., (2013), 'A Treatise of Legal Philosophy and General Jurisprudence', (Springer Publishers, EU), pp 33-55; the development of law can also be more philosophical and can consider morality. Legal philosophy in this sense is more abstract and is often referred to as jurisprudence.

[649] Gerald J. P., (1995), 'Public Practical Reason: An Archaeology', Social Philosophy and Policy, Vol 12, Issue 1, pp 43-86.

[650] Dworkin, R., (1977), 'Taking Rights Seriously', (1st Ed, Harvard University Press, US), pp viii.

1. **Aleksander Peczenik**[651], doctrinal research influences the actual application of the law (judges also use this methodology). Legal academics work on a system that is also used in practice so important normative consequences can follow from their work
2. **Christopher McCrudden**[652] described the doctrinal approach as 'mother's milk to academic lawyers because this is the method through which students learn to 'think like a lawyer'
3. **Grant Lamond**[653] "law is not simply a body of rules. It is a body of reasoned doctrines that are interconnected and interrelated". He wrote that in legal research, it is crucial that the law is understood as a system. It would be a grave misunderstanding to consider this approach as a mere description of existing legislation and case law
4. **Harry Edwards**[654] raised concern in American legal academia about the decline of the doctrinal method and recommended traditional 'black letter' as a suitable research method for legal study
5. **Edward T Koopmans**[655] describes that anyone making use of a coherent system may potentially propagate a change of the law if this fits in with the system itself. For instance, if biologists classify 'whale' as a mammal instead of a fish, nothing changes in the world of facts. However, if jurists decide that a picture is a part of the fixture rather than fitting, it may affect during repossession of that house (fixture belongs to the owner and fitting belongs to the bank)
6. **Mark van Hoeke**[656] argues that the description of any law is undoubtedly linked to how the judiciary interprets it. When one describes the law from a scholarly point of view, one formulates hypotheses of why that specific rule exists; what is its validity; and what is actually meant by the rule

[651] Peczenik, A., (1984), 'Legal data: An essay about the ontology of law', In Theory of Legal Science (1st Ed, Springer, Dordrecht), pp 97-120.
[652] McCrudden, C., (2006), 'Legal Research and the Social Sciences', Law Quarterly Review, Vol 122, pp 634.
[653] Lamond, G., (2014), 'Analogical Reasoning in the Common Law', Oxford Journal of Legal Studies, Vol 34, pp 567-581.
[654] Edwards, H., (1992), 'The Growing Disjunction Between Legal Education and the Legal Profession', Michigan Law Review, Vol 91, pp 34.
[655] Koopmans, ET., (1991), 'Thinking and doing the right', Legal dotted work, Deventer (Kluwer), Vol 67.
[656] Van Hoeke, M., (2011), 'Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?', (Hart publishing, Oxford, UK), pp 13, 19, 25, 46.

7. **Mathias and Daith**[657] argue that new contributions to knowledge are not merely a re-jigging of old laws. He makes the general statement that the legal researcher when acting as an interpreter is conjoining the legal formants in his distinct manner. He further argues that different interpretation of various researchers about a single rule is acceptable as long as it is done appropriately to suit the purposes of the particular research
8. **Oliver Holmes**[658] argued that using legal methodology, the researcher places himself inside the researched legal system. This feature allows the researcher to speak as if they are judges or legislators and to address these official lawmakers on their own terms, suggesting alternatives for the outcomes they reach
9. **Paul Chynoweth**[659] explains legal methodology as forming doctrines by analysing current legal rules. He documented that legal rules in common law jurisdictions primarily come from statutes and cases which cannot provide the law on their own as they only have an application when they are applied to the facts. Therefore, the only way to "make sense" of the law is through an analysis of cases and statutes concerned with each particular area of law
10. **Phillips and Pugh**[660] in many other fields of study, what could count as a new contribution in the law became, and still is, contested ground. The whole purpose of a PhD is to find a new contribution to knowledge
11. **Richard Posner**[661] is concerned that theoretical and interdisciplinary work excessively characterises legal doctrinal approach. He suggested, "Disinterested legal-doctrinal analysis of the traditional kind remains the indispensable core of legal thought, and there is no surfeit of such analysis today"
12. **Robert Morris**[662] the new contribution may be incremental and not massive. It nevertheless must be substantial and material, not make weight, and it really

[657] Mathias, M., & Daith, M., (2012), 'Mapping Legal Research', Cambridge Law Journal, Vol 71, Issue 3, pp 651-676.
[658] Holmes, O. W., (2004), 'The Common Law', (1st Ed, Barns & Noble, London), pp 163.
[659] Chynoweth, P., (2008), 'The Legal Research' in Andrew Knight and Les Ruddock (eds.), Advanced Research Methods in the Built Environment, (Blackwell Publishing, Manchester), Chapter 3.
[660] Phillips, E.M., & Derek, S.P., (2005), How to Get a PhD: A Handbook for Students and Their Supervisors (Maidenhead, Open University Press), pp34-38.
[661] Posner, R., (1987), 'The Decline of Law as an Autonomous Discipline: 1962-1987', Harvard Law Review, Vol 100, pp 777.
[662] Morris, RJ., (2011), The New Contribution to Knowledge, A Guide for Research Postgraduate Students of Law, University of Hong Kong available online at;
http://hub.hku.hk/bitstream/10722/134610/2/content.pdf [Assessed 2nd October 2015].

must be new, and it really must be a true contribution in an objectively and globally verifiable way[663]"

13. **Slater and Mason**[664] postulated that black letter approach is a particular way of interpreting what is deemed to count as legal research. "Legal methodology is not merely a perspective upon, or even a style of articulating, the substantial nature of a research topic. It is an interpretive scheme whose overall framework operates to both setup and demarcate the very meaning of the research project". In other words, black letter analysis reveals the presence of a series of rules based upon a smaller number of general legal principles
14. **Terry Hutchinson and Nigel Duncan**[665] define legal methodology, "research which provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, and explains areas of difficulty and, perhaps, predicts future developments".

The statements from above-mentioned authors authenticate the use of doctrinal research methodology. Similar statements can be found from various other legal scholars who justify the use of 'black letter' approach to study jurisdictional issues in cyberspace, as an authentic academic method for a PhD thesis.

3.10.: Appraisal of legal methodology:

The thesis is not merely reproducing old statements that others have produced, but it is putting its interpretations of either how defamation law works, or indeed how it should work in future concerning online communication. In this way, Bell[666] outlines that legal research has the same approach as the interpretive social sciences such as ethnography and political science. However, legal research is also normative. It aims to set out norms that apply in a particular legal system. Researchers state what ought to be done according to the legal point of view in a particular legal system.

[663] Advanced (legal) Research Methodology; Available online at: http://www.robertjmorris.net/ARMNewContributionArticle2.doc [Accessed 19th July 2016].
[664] Slater, M., & Mason, J., (2007), 'Writing Law Dissertations', (Pearson Ltd, England), Ch. 4 - Black Letter Approaches to Doctrinal Research.
[665] Hutchinson, T., & Duncan, N., (2012), 'Defining what we do: Doctrinal Legal Research', Deakin Law Review, Vol 17, pp 83.
[666] Bell, J., (2011), 'Legal Research and distinctiveness of Comparative Law' in Mark Van Hoeck (eds.) Methodologies of Legal Research, (Oxford, Hart Publishing), pp155-176.

The thesis does not merely reproduce the beliefs of lawyers about what should be done, but gives its best interpretation of the norms of the system, whether or not these interpretations can be contested or not. The above discussion can be summarised using the statement of Peter Birks[667], who expressed that, "traditional legal research must remain the heart of the law schools' research because it explains, criticises, corrects and directs legal doctrine[668]".

The above analysis would allow the thesis to concentrate on doctrinal research from a practical angle to meet the aims and objectives of the thesis. The above analysis has been carried out to justify the black-letter approach to research the jurisdictional issues in cyberspace. It is established that legal method differs from other methodologies because the black letter methodology does not look at the effect of the law or how it is applied. It, however, examines law as a written body of principles which can be discerned and analysed using only legal sources. On the other hand, there may be a need for an additional method to meet those aims and objectives. This thesis will compare defamation laws and decided cases from other jurisdictions; therefore, a further process of comparative legal approach will be the part of this methodology.

3.11.: Comparative methodology:

The above explanation clarifies that doctrinal approach is the chosen methodology for this thesis. However, many choices need to be made in a more explicit way when carrying out valuable doctrinal work. The above discussion shows that methodology matters more to legal-dogmatic research than it is usually assumed. Only a better methodological awareness in standard legal scholarship will reveal the many choices immanent in carrying out doctrinal work[669]. Legal scholarship can consist of much more than only doctrinal work. The following economic, or comparative work). So, to compare different defamation laws from different jurisdctions, comparative method will become a part of the legal methodology.

[667] Birks, P., (1996), 'Editor's Preface' in Peter Birks (eds.), what are Law Schools For? (Oxford University Press, UK), pp ix.
[668] Exciting Times for Legal Scholarship?, Law and Method; Available online at: http://www.lawandmethod.nl/tijdschrift/lawandmethod/2012/2/ReM_2212-2508_2012_00 [Accessed 19th July 2016).
[669] MacCormick, N., (1994), 'Legal Reasoning and Legal Theory', (Oxford University Press, UK), pp 91; reality is complex and it will not advance the cause of knowledge to assume that one comes to understand reality by stripping away superstructure to get to base.

This chapter establishes that the bad reputation of doctrinal work is undeserved[670]. This does not mean that alternative approaches to the law are not relevant. But they all have to take the doctrinal description of the existing law as a starting point, so they are dependent on legal doctrine[671]. For instance, comparative analysis of law would be impossible without first knowing what the existing law says.

3.11.1: What is comparative approach:

AResearch by using comparative study includes the comprehensive review and critical analysis of collected materials rather description only. It asks how different legal systems deal with the same problems and with what degree of perceived success or failure[672]. Therefore, elements of critical assessment, analysis and appraisal of relevant concepts will be included in the research to compare and clarify the difference in legal approaches.

3.11.2: Importance of comparative approach:

1. Zweigert and Kotz[673] noted that comparative law is a sub-branch of legal research. In this methodology, the normative ambitions of legal research are transparent over most of its life. To explain this further, they also outline that foreign law, as well as one's own, must not be taken at face value. It must be "stripped of its camouflage". By this, they mean that there are reasons why a law has been introduced and this should be the guiding research aim. This has to be pointed out because when merely looking at one's own law, there is often a tacit knowledge that is known by the researcher, which would not be the case when investigating the laws of another country.

[670] Smits, J. M., (2017), 'What is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research', New York Rethinking Legal Scholarship: A Transatlantic Dialogue, pp 207-228.
[671] Schiavello, A., (2011), 'Neil MacCormick's second thoughts on legal reasoning and legal theory: A defence of the original view', Ratio Juris, Vol 24, Issue 2, pp 140-155.
[672] Salter, M., (2007), 'Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research' (Harlow, Longman), pp 183.
[673] Zweigert, K. & Kotz, H., (1998), 'An Introduction to Comparative Law', in Tony Weir (eds.), (3rd Ed, Oxford University Press), pp15–18, 58–62.

2. Bell[674] established that "merely comparing texts is not a proper comparative law at all." He further explains that although comparing different legal systems may seem like a descriptive task. The purpose of this contribution has been to show that, in significant respects, comparative law is an instance of the more general form of legal research, but with the researcher's need to understand the culture and social context of the foreign nation[675].

3. Mark[676] argues that comparative legal research demonstrates that even where the reasons for one country to have the same laws for the same reasons as a neighbouring country, the goals of those laws can be achieved in different ways. This can show one of two things: Firstly, the social contexts may be different and the societal norms of the country may differ. Secondly, it may be possible to learn from the way that other countries seek to answer the same problems and whether they achieve those answers either more or less successful than another country.

This can lead to arguments about the concept of comparative law. Firstly, it can be argued that it is merely a branch of doctrinal law as it still analyses statutes and cases albeit in different countries. It cannot be denied though that the objective of many comparative lawyers is to achieve harmony and/or unification of laws. This puts it in contrast to national law researchers who only consider the law of their states[677].

3.11.3: Comparative approach in this research:

The application of this approach will enable this thesis to analyse existing defmation laws in a more systematic and logical way. Noticeably, a comparative study will be

[674] Bell, J., (1987), 'The Acceptability of Legal Arguments', in MacCormick, N., & Birks, P., (eds.), The Legal Mind, (Clarendon Press, Oxford), pp 48.
[675] Bell, J., (2010), 'Legal Research and the Distinctiveness of Comparative Law', (Oxford University Press, London), pp 129.
[676] Mark, E., (2015), 'Role and Method of Interdisciplinary Contextualisation in Comparative Legal Research' Available online at: http://www.elevenjournals.com/tijdschrift/ELR/2015/2/ELR-D-15-004_004.pdf [Assessed 19th July 2015].
[677] Mathias, M., & Daith, M., (2012), 'Mapping Legal Research', Cambridge Law Journal, Vol 71, Issue 3, pp 651-676.

simultaneously made in the analytical study[678]. It may be argued that the involvement of two methods may complicate the research. As a counter argument, various researchers conduct research using mix-method approach. Besides using comparative study for analysing jurisdictional issues is merely a sub-part of the black letter approach because the researcher will still be analysing case laws and statutes. Concisely, using a comparative analysis within the legal research would entirely depend on the aim and objectives of a particular research topic. The addition of the use of comparative law as can be seen from the research questions; the researcher will need to think and act likes a scholar who seeks to standardise and unify international laws of the jurisdiction. This will be done in accordance with the different mindset required by the researcher to consider cultural and social issues and the reasons why the relative differences may make it hard to unify the jurisdictional issue[679].

3.12.: Summary:

During a PhD level research, a methodologically sound doctrinal description requires many choices to be made[680]. For this thesis, the important points are as follows:

1. **Choice of material:** Most technical questions about the choice of materials: How to select from all relevant sources. Which court cases will be analysed? To what extent are defamation explanatory reports to legislative texts can be included as relevant materials? Should all literature written within one jurisdiction be looked at, or is it fine to limit oneself only to textbooks? What is the role of foreign literature? The present selection of literature is often too random[681].

2. **Method of interpretation:** The choice of relevant materials leads to techniques required to describe the existing law? (If the 2013 Act does not repel previous laws, to what extent they can be applied to cyberspace). Similarly, a jurisdictional method adopted for libel (may/may not) apply to other systems.

[678] Hutchinson, T., & Duncan, N., (2010), 'Defining what we do - Doctrinal Legal Research', (City University London, ALT), pp 30.
[679] Salter, M., & Mason, J., (2007), 'Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research', (Pearson Longman, UK), pp 19-36.
[680] Twining, W., (1994), 'Blackstone's Tower: The English Law School', (1st Ed, Stevens & Sons, London), pp 131; even the lowest forms of exposition involve interpretation, selection and arrangement.
[681] Hutchinson, T., (2010), 'Researching and Writing in Law', (3rd Ed, Thomson Reuters, London), pp 41.

Because every Act defines its jurisdictional methods; for instance, Section 9 of the Defamation Act 2013 explains the jurisdiction for foreign-based defendants.

3. **Choice of system:** The third choice to be made is which conception of a 'system' is used (is it cyberspace or the internet infrastructure which need regulation (see-2.2.3)). Next to the elements that make up the system and the techniques used to describe it, one needs an idea of when this combination of elements and techniques forms a system (libel is a social media conduct, so the conduct can be regulated rather than social media).

3.12.1.: Conclusion:

This is a library-based thesis which focuses on case-law, statutes and other legal sources. The analysis of old cases would establish that how the traditional rules being applied. The analysis of recent cases would confirm if the same rules apply to cross-border nature of cyberspace. The comparison of both analyses would determine if the approach of judges has been changed or the laws are altered/modified for particular issue. The opinions of scholars on the issue of jurisdiction will also be evaluated. This is an exploratory study in that it involves a search of an array of sources dealing with libel and social media use. To stay up-to-date with the pressing issues regarding individual reputation affected by new media, this thesis examines unmediated sources such as blogs, video blogs, social reviews, European Union institutions and other bodies. Contributions by a range of contributors from the Internet scholars to professional journalists to law firms to private citizens.

The Defamation Act 2013 is used herein to indicate English laws. Secondary sources include books and journal articles, case commentary, as well as online sources of traditional news reportage and opinion, online dictionaries and encyclopedia. To support particular points, this thesis employs government, non-governmental, institutional and social empirical study results. In short, the doctrinal method will provide the starting point for this project, which will begin with a critique of the existing literature and commentary undertaken in the area of defamation jurisdiction. This included, among other things, textbooks, journal articles, conference papers, newspaper reports and online information. While these secondary resources are not authoritative in doctrinal research, they may be persuasive.

3.13.: Vision of this methodology:

This methodology provides a novel vision for researchers who intend to research in any field of law. It can be divided into four phases. See Table-5.

Table-5: Vision of Legal Methodology

#	VISION	OUTCOME	THIS THESIS
PHASE 1	Act as a litigant	Gather initial information/build a strategy (pros & cons)	Ch1, Ch2, Ch3
PHASE 2	Act as a Lawyer	Find legal information & sources	Ch4, Ch5, Ch6
PHASE 3	Act as a Judge	Analyse arguments and conclude	Ch7, Ch8
PHASE 4	Act as media/review	Review the result as a layman to critique and give alternative solutions	Ch9

SECTION 2:

Understanding of Jurisdiction and Online Libel

[CH. 4; CH. 5 and CH. 6]

CHAPTER 4 - (PIL)

PRIVATE INTERNATIONAL LAW

(It also named as conflict of law)

4.1.: Background:

"Conflict of laws is regarded as an arcane science far removed from real-world concerns, and characterised by an esoteric vocabulary; it inevitably attracts speculative minds whose forte is not necessarily common sense[682]"

Social media users transmit information instantaneously and globally with a mouse click and form legal relationships without any physical element[683]. This communication poses a challenge to the application of private international law because of its reliance on geographical connecting factors (see-7.1). English courts have resolved cross-border disputes even before the advent of the internet[684]. English judges are quite famous in undertaking the conflicts even when none of the parties is from England[685] (see-2.17). The case law[686] suggests that judges place increasing reliance on statutory interpretation to determine cross-border application of legislation; therefore, there should not be a problem in applying traditional rules to cyberspace defamation. However, these disputes can only be decided if court has personal jurisdiction.

In the absence of 'personal jurisdiction', the court will have to dismiss the claim. The court, which is declining the jurisdiction, cannot decide[687]:

1. Which other court can litigate this case
2. Which court can/cannot exercise jurisdiction
3. What can be the possible outcome of the case[688]

In the absence of 'personal jurisdiction', English courts have discretionary power under CPR r6.36, to exercise its jurisdiction but in certain circumstances[689] (see-7.8).

[682] Friedrich K. J., (2000), 'Selected Essays on the Conflict of Laws', Transnational Classics in International Law, (1st Ed, Transnational Pub), pp ix.
[683] Bigos, O., (2005), 'Jurisdiction over Cross-Border Wrongs on the Internet', ICLQ, Vol 54, pp 585-602; technically it involves physical elements in the real world in the forms of users and devices
[684] *Davidson v Annesley* [1926] Ch. 692.
[685] The reason could be the English language, awards in damages or arbitrary clauses etc.
[686] *Bilta (UK) Ltd v Nazir* [2015] UKSC 23; *Dar Al Arkan Real Estate Development Co v Majid Al-Sayed Bader Hashim Al Refai* [2014] EWCA Civ 715; *Office of Fair Trading v Lloyds TSB Bank* [2007] UKHL 48.
[687] Lino, S., (2015), 'Cyberspace regulation: Cesurist and Traditionalists', Journal of International Relations, Vol 6, Issue 1, pp 86-99.
[688] Calster, G., (2013), 'European Private International Law', (1st Ed, Hart Publishing, Oxford), pp 1.
[689] The English court takes into account the interest of the parties, interest of an economical trial, the public interest, right to fair trial and forum conveniens.

4.1.1.: Discretionary Jurisdiction:

Jurisdiction laws simply guide the claimant where to look for a decision. However, these rules cannot decide the merits of a case because jurisdiction is 'a link' between social media, courts and the litigants[690]. If 'a link' within the forum can be established[691], English court can assume discretionary jurisdiction. This link can be the gravity of the damage to reputation[692], which occurred within the state. This pertinent question was discussed in the *PJS* [2016][693] case, where court upheld an injunction in absence of personal jurisdiction. The required link was that the alleged content was first published in England and then disseminated over the internet. For instance, Theresa May suffers harm because of a post published in India than English judges may be reluctant to assume jurisdiction because similar jurisdiction may also exist in Indian procedural laws[694]. However, if the damage is sustained 'only in England' then English judges can exercise discretionary jurisdiction because there may not be any parallel jurisdiction available to the defendant.

Even more importantly, if a court assumes discretionary jurisdiction, it still has to apply the traditional rules: Is a service of a writ outside possible; what are CPR provisions applicable; is it a case involving concurrent proceedings; does this online dispute has an arbitration clause; can the foreign proceedings be restrained in an online libel case[695]. After applying all the rules, the fundamental question remains: Will the trial of this online defamation case takes place in England or abroad? At this point, this chapter connects with the subject matter of this thesis that if the social media libel trial takes place in England, then, which laws are to be applied.

[690] Rogerson, P., (2010), 'Private International Law – Jurisdiction', the Cambridge Law Journal, Vol 69, Issue 3, pp 452-455.
[691] Lord Collins of Mapesbury, (2012), 'Dicey, Morris & Collins on the Conflict of Laws', (15th Ed, Sweet & Maxwell, London), Rule 34, at para 11.141.
[692] *King v Lewis* [2005] ILPr 16.
[693] *PJS v News Group Newspapers* [2016] UKSC 26.
[694] Concurrent jurisdiction is outside the scope of this thesis. However, if a claim is issued for the damage suffered only in one country, it will provide a link for discretionary jurisdiction. For global damages, any court must have personal jurisdiction.
[695] Arzandeh, A., (2017), 'The English Court's Service-Out Jurisdiction in International Tortious Disputes', Law Quarterly Review, Vol 133, pp 144-160.

4.1.2: Synopsis of the chapter:

This chapter will only evaluate the practical issues in exercising jurisdiction for the online defamation. There will be a test of the factors, which hinders the application of traditional laws to the internet. The thorough analysis of recent case law is conducted in chapter 7. This chapter will only evaluate this issue from the perspective of English private international law, which will identify how digital communication is accommodated by English courts using traditional jurisdiction laws:

1. The structure and content of private international law
2. The relationship between private and public international law
3. The interaction between PIL and pertinent aspects of national law

4.2.: What is private international law? (PIL)

The Nielson[696] case established that private international law rules help to achieve consistency in international litigation. It[697] is a branch of domestic law, which assists in matters of private individuals at international law[698]. It is a part of all the sovereign states national law[699]. It reminds the fact that there are different territorial jurisdictions in the world[700]. These territorial jurisdictions possess different laws so it becomes more relevant whenever there is a dispute of transitional level[701]. Its rules have been developed to accommodate global activity within the framework of domestic legal units. It first came to prominence in English courts towards the end of the 18th century, mainly because of conflicts between the laws of England and Scotland. In the 19th century, its development was enormously accelerated by the rapid increase in

[696] *Neilson v Overseas Projects Corporation of Victoria* [2005] 221 ALR 213.
[697] Its rules merely refers to either a competent court, the applicable law, or whether recognition and enforcement are possible. These are procedural rules, or perhaps rather as technical or formal rules, which are not concerned with the substance of a dispute; Bogdin, M., (2012), 'Private International Law as Component of the Law of the Forum', The Pocket Books of The Hague Academy of International Law, Vol 13, pp 348.
[698] McClean, D., & Ruiz, V., (2012), 'The Conflict of Laws', (8th Ed, Sweet & Maxwell, London), pp 2.
[699] *Schibsby v Westenholz* [1870] LR 6 QB 155.
[700] Bonomi, A., (1999), 'Mandatory rules in private international law: the quest for uniformity of decisions in a global environment', Yearb Private Int Law, Vol 1, Issue 1, pp 215-247.
[701] Westlake, A., (1925), 'Treatise on Private International Law' (7th Ed, Sweat & Maxwell), pp 1.

commercial and social intercourse between England and Continental Europe and with the British territories overseas[702].

Eady J[703] stated that 'English private international law has held for many years, in order partly to achieve consistency and certainty'. The scale of social media's global reach, which always involves foreign elements[704], may be beyond the geographical limits. PIL is still the quintessential national law of all[705] because it provides the basis for jurisdiction and the system of applicable law[706]. The requisite elements of private international law are:

1. Domicile, nationality, residence as connecting factor
2. Rules governing jurisdiction
3. Applicable law
4. Choice of forum
5. Civil procedural rules
6. Service outside of jurisdiction

4.2.1.: Sources of private international law:

Private international law has a variety of sources and can be found in the national legislation, civil procedural rules, international treaties and European regulations[707]. Interestingly, the objectives of private international law rules do not differ between the states because every court must be competent before trying a case[708]. However, the substantive law (which identify applicable law) may be used differently along the globe[709].

[702] Lord Collins of Mapesbury, (2012), 'Dicey, Collins and Morris: The Conflict of Laws', (15th Ed, Sweet & Maxwell), Vol 1, pp 9.
[703] *Iran v Berend* [2007] EWHC 132 (QB); the judge assumed jurisdiction but accepted that the applicable law was 'French law' and refused to apply English law on this issue.
[704] Svantesson, D.J.B., (2011), 'Recent Developments in Private International Law Applicable to the Internet', Journal of Internet Law, Vol 15, Issue 6, pp 26-35; the publishers or ISPs are usually based in foreign jurisdictions.
[705] Paul, JR., (1988), 'The Isolation of Private International Law', Wisconsin International Law Journal, Vol 7, pp 149.
[706] Conflict of Laws, http://conflictoflaws.uslegal.com/ [accessed 18th January 2018].
[707] Westlake, A., (1925), 'Treatise on Private International Law' (7th Ed, Sweat & Maxwell), pp 3.
[708] Du-Bois, I., (1988), 'The Significance in Conflict of Laws of the Distinction Between Interstate and International Transactions', Minn. LR, Vol 17, pp 361.
[709] Ginsburg, J. C., & Sirinelli, P., (2015), 'Private International Law Aspects of Authors' Contracts: The Dutch and French Examples', Colum. Journal of Law & Arts, Vol 39, pp 171.

The general sources of private international law rules are[710]:

4.2.1.1.: Civil procedural rules:

Civil procedural rules defined in Para 6 are one of the main national sources of English law (see-6.6, 2.11.6.3)

4.2.1.2.: Judicial decisions:

The main source of choice of law rules in England remains the common law (see-7.2).

4.2.1.3.: Constitutional sources:

The Commonwealth constitution includes some provisions important to private international law questions. However, in England, it may only have persuasive importance only.

4.2.1.4.: International conventions:

Private international law is about the national law of England. Some of this law has its origins in international conventions and only becomes part of the substantive law of England if enacted by legislation (see-2.7). UN conventions may try to adopt international conventions that introduce uniform legislation (substantive law). The Brussels Convention, the Lugano Convention and Hague Conventions did not introduce uniform substantive laws, but it introduced a uniform 'conflict of law' (see-1.8.1).

4.2.1.5.: EU Directives:

The jurisdiction of English courts over 'civil and commercial matters' is governed by 'the Regulation[711]'. England is a part of the EU, whose laws have supremacy over English domestic rules (see-2.7.1). The situation may change after the completion of

[710] Jitta, D. J., (1919), 'Development of Private International Law through Conventions', Yale LJ, Vol 29, pp 497; Dean, W. T., (1950), 'The Conflict of Conflict of Laws', Stan. L. Rev, Vol 3, Issue 388; Bayitch, S. A., (1954), 'Conflict Law in United States Treaties', Miami LQ, Vol 9, Issue 9; Cook, W. W., (1931), 'The Jurisdiction of Sovereign States and the Conflict of Laws', Colum. L. Rev., Vol 31, pp 368.

[711] Recast Brussel Regulation 2012 replaced the earlier Brussel I regulation.

'Brexit'. Besides, statutory rights claims of defamation, privacy and personality breaches are excluded by Article 1 (2)[712]. Therefore, these claims will be decided under domestic and common law rules for the purpose of applicable law. As far as jurisdiction is concerned, if a defendant is non-EU based, English CPR rules will determine court's competence.

4.2.1.6.: Legislation:

English private international law rules are codified in the 'Civil Procedural Rules 1998'. These rules are based on 'physical presence', 'service of writ' and 'forum non conveniens'.

4.2.1.7.: Scholarly writing:

Why the courts adopt these rules and why they sometimes have difficulties applying the rules. Various authors (Dicey, Morris, Peter Stone, Peter Hay, Adrian Briggs, Uta Kohl, Wendy Collins, and Muir Watt) have written commentaries on conflict of law rules (see-4.4.1).

4.2.2.: Objectives/rationale of Private International Law:

Why does a court ever apply a foreign law – why not simply apply law of forum? What is the policy/theory underpinning private international law? (see Table-6 and Table-7)

Private international law rules will be used to look for the issue in the case not the cause of action[713]. Its application will lead to the assumption of personal jurisdiction and application of foreign law in the forum. The reasons for applying private international law are to fulfil reasonable and legitimate expectations of the parties involved in a

[712] Rome II Regulation does not apply to statutory regime enacted in the Private Internation Law (Miscellaneous Provisions) Act 1995.

[713] *MacMillan v Bishopsgate Investment Trust plc* [1996] WLR 387; Staughton LJ noted that in the case involving foreign element, it is important to decide what system of law is to be applied, either to the case as a whole or to a particular issue.

dispute[714]. Similarly, 'choice of law' promotes certainty, fairness, predictability and uniformity by applying foreign law[715].

If a court disregards the foreign law, it may lead to injustice for the injured party[716]. Similarly, if the court does not entertain international claims, it may disregard the element of certainty and consistency. International harmony can only be achieved by using private international law[717] because it allows the application of foreign law, which produces global judicial harmony[718]. Besides the rules of conflict of laws benefits the forum state because it benefits from stability concerning cross-border legal relationships[719]. Therefore, the objectives of private international rules are[720]:

1. Consistency
2. Comity
3. Particular justice

Table-6: Rationale Of Private International Law

#	**Meaning**	**Element**	**Jurisdiction**	**Choice of law**
Lex fori	The law of forum	Only Local element / no foreign	By default	By connecting factors
Lex loci delicti	The law of the place where the tort committed	Foreign element is must	Has to determine jurisdiction	By *lex causae*
Both are determined under private international law because a domestic claimant may have dual nationality. The next step is procedural law see Table-7				

[714] Keyes, M., (2008), 'Statutes, Choice of Law, and the Role of Forum Choice', Journal of Private International Law, Vol 4, Issue 1, pp 14.
[715] Hook, M., (2017), 'The "statutist trap" and subject-matter jurisdiction', Journal of Private International Law, Vol 13, Issue 2, pp 435.
[716] Clarkson, V., & Hill, J., (2011), 'The conflict of laws', (1st Ed, Oxford University Press, Oxford), pp 9-12.
[717] Mills, A., (2017), 'The 'Hague choice of court convention' and cross-border commercial dispute resolution in Australia and the Asia-pacific', Melbourne Journal of International Law, Vol 18, Issue 1, pp 1-15.
[718] Dicey, A.V., Morris, C., & Collins, A., (2012), 'The conflict of laws', (Sweet & Maxwell, London), pp 5.
[719] Bogdan, M., (2012), 'Private international law as component of the law of the forum: General course', The Hague: Hague Academy of International Law, pp 49-70.
[720] Hook, M., (2017), 'The "statutist trap" and subject-matter jurisdiction', Journal of Private International Law, Vol 13, Issue 2, pp 435.

4.3.: The procedure of using PIL:

Cyberspace disputes will have links to almost all countries in the world[721]. To solve this conflict numerous, varied and contradictory system of national laws may have to be applied. This globalisation and extraterritorial claims allow the use of PIL in cyberspace. Sir Hersch Lauterpacht stated[722] that "the purpose of private international law is to make possible the application, within the territory of a state, of the law of foreign states. This is an object dictated by considerations of justice, and the necessities of international intercourse between individuals and indeed, by the enlightened conception of public policy itself".

The procedure of PIL in a cyberspace case would as follow:

1. Assumption of jurisdiction – authority of the court
2. Characterisation of legal issue – cause of action
3. Classification of the rule of law – choice of law

4.3.1.: Jurisdiction:

The very first issue a court will have to decide if it has the authority to adjudicate this case. In England, the courts must have both the subject matter jurisdiction and personal jurisdiction (see-6.6.2). Subject matter jurisdiction ensures that all the proceedings are initiated in the appropriate courts[723]. For instance, a claimant of 'privacy breach' cannot turn to the family court for a remedy. Personal jurisdiction is the core theme of this thesis, hence discussed in Chapter 6.

[721] Svantesson, D.J.B., (2011), 'Recent Developments in Private International Law Applicable to the Internet', Journal of Internet Law, Vol 15, Issue 6, pp 26-35.
[722] Application of the Convention of 1902 Governing the Guardianship of Infants (Netherlands v Sweden) (The Boll Case) 55 ICJ Reports (1958), pp 95.
[723] Rice, D. T., (2000), 'Jurisdiction in Cyberspace: which law and forum apply to securities transactions on the Internet', University of Pennsylvania Journal of International Economic Law, Vol 21, Issue 3, pp 585-658.

4.3.2.: Characterisation:

After deciding jurisdiction, the important thing a judge must do is to categorise the legal question under a particular legal heading, is called characterisation[724]. It is also known as classification[725], which is one of the crucial stages in the litigation because the outcome of any cyber-dispute may entirely depend on the initial characterisation[726]. It helps the judge to identify the cause of action, for example, is the dispute relates to contract, defamation, tort, privacy or any other online issue.

Let's The analyses of the *Ogden*[727] case will explain the classification system in private international law. A French national of 21, married an English national, without obtaining the consent of his parent. The marriage took place in England, where consent at the age of 21 is not required, whereas in French law consent is required. This is a typical PIL case involving two applicable laws. Under French law, this marriage is void, whereas in England it is a valid marriage. The characterisation involves two questions[728]:

1. Has some system of foreign law created the right or duty that has been alleged?
2. Will that foreign-created status or right be recognised and enforced in the forum?

The importance of characterisation can be explained by the *Raiffeisen*[729] case, which involves a marine insurance policy by a French company. The policy was assigned to the claimant with the sale of the ship. When the claimant brought the proceedings in England, the French company argued that governing law was French. Now, if the decision is made according to the English law the assignment of the policy is valid, whereas under French law this assignment would be void. This case explains the importance of characterisation because in cyberspace even a simple case of defamation

[724] *MacMillan v Bishopsgate Investment Trust plc* [1996] WLR 387; in private international law any dispute which involves a foreign element, characterisation is the second step, which reconcile differences between laws of different legal jurisdictions and identifies the applicable law.
[725] It refers to the allocation question raised by factual situation before the court to its correct legal category and its object is to reveal the relevant rule or rules for the choice of law.
[726] Vartanian, T., (2000), 'Whose laws rule the internet? A U.S. perspective on the law of jurisdiction in cyberspace', International Law Forum, Vol 2, Issue 3, pp 196-201.
[727] *Ogden v Ogden* [1908] PN 6.
[728] Lorenzen, E. G., (1941), 'The Qualification, Classification, or Characterization Problem in the Conflict of Laws', The Yale Law Journal, Vol 50, Issue 5, pp 743-761.
[729] *Raffelsen Zentral Bank v Five Star General Trading* [2001] CLC 84.

may have many defendants with different nationalities. Similarly, in some countries defamation is dealt with under civil law, whereas in some countries, it could be a criminal matter. Hence, the initial characterisation would change the whole outcome of a simple online defamation claim.

4.3.2.2.: The process of characterisation:

The process of characterisation identifies the cause of action which then lead towards the 'choice of law[730]' i.e. before deciding 'choice of law' issue the court has to analyse the submissions towards the dispute[731] or identify the factual aspects the issue.

This process is completed in two steps[732]:

1. **A person's status**: (minor, infant, adult, married, single, insane)

   It is determined by personal law, which is decided based on domicile and nationality (is the defendant domiciled in England or holds British nationality). If yes, then English law is applicable (see-4.6.2).

2. **Creation of rights and duties:**

   It is determined by law of the location or where the property is located. In social media libel claims, the location of property is not identifiable; therefore, governing law is determined differently. For instance, the issues related to the tort of defamation will be governed using *lex loci actus*; the issues involving a breach of online contract will be governed by *lex contractus*; and the dispute involved property use *lex situs* to determine the governing law in social media. (The 'art' stolen via the internet becomes complicated with the application of *lex situs*; however it is beyond the scope of this thesis).

[730] Wang, F., (2010), 'Internet Jurisdiction and Choice of Law: Legal Practices in the EU, US and China', (Cambridge University Press, UK), pp 7.
[731] Cheshire (1938), 'Private International Law', (2nd Ed, UK), pp 30.
[732] Allarousse, V., (1991), 'A Comparative Approach to the Conflict of Characterization in Private International Law', Case W. Res. Journal of International Law, Vol 23, pp 479.

The questions related to the person's status will determine if the defendant is minor or not. Similarly, the question related to the allocation of rights and duties will determine if he owes the same capacity as an adult. For instance, if a minor is involved in defaming President Trump, can the same duties be imposed on that minor as well?

4.3.2.3.: Substantive law versus procedural law:

In cross-border cases, courts have to resolve two different conflicts[733]:

1. Conflict of jurisdiction (either private or public international law)
2. Conflict of applicable laws (either substantive law[734] or procedural law[735]).

Private international law principles are applied once there is 'individual foreign element' involved[736], whereas public international laws are only applicable if the issue involves a state versus private entity. Importantly, the rules relating to the applicable law are different from rules of jurisdiction[737]. Regulations about applicable law are substantive (these rules may lead to the application of foreign law in England); whereas provisions relating jurisdiction are procedural, (they will decide whether England is competent or England has no authority)[738]. The jurisdiction rules, which are procedural or formal rules, are not concerned with the parties involved or the substance of a dispute. It can be understood from Table-7.

[733] Ahmed, M., & Beaumont, P., (2017), 'Exclusive choice of court agreements: Some issues on the Hague convention on choice of court agreements and its relationship with the Brussels I recast especially anti-suit injunctions, concurrent proceedings and the implications of BREXIT, Journal of Private International Law, Vol 13, Issue 2, pp 386.

[734] Substantive rules explain whether if law of tort, law of contract, property law or family law is applied. Court may apply foreign substantive law or lex causae.

[735] Procedural rule describe what is civil procedural law, how to collect evidence and calculation of damages etc. Procedural rules will always be the law of the forum/lex fori.

[736] Mills, A., (2009), 'The Confluence of Public and Private International Law', (Cambridge University Press, UK), pp 55.

[737] Mills, A., (2017), 'The 'Hague choice of court convention' and cross-border commercial dispute resolution in Australia and the Asia-pacific', Melbourne Journal of International Law, Vol 18, Issue 1, pp 1-15.

[738] Dicey, Morris and Collins (2012), 'The Conflict of Laws' in Lord Collins (eds.) (15th Ed, Sweet & Maxwell, London), pp [1–020] & [1–022].

Table-7[739]: Procedure v substance of case

Procedural Law	**Substantive Law**	**Private International law**
CPR, Evidence, limitation period, 1 year rule for libel, calculation of damages	Law of contract, family Law, law of property, law of tort- defamation, libel	Rules of choice of law, (law of the place where the tort was committed)
It will always be the law of the forum/lex fori. There is never a question of an English court applying civil procedure laws of any other state	An English court may apply the foreign substantive law or *Lex causae* (it is the law chosen by the forum court from the relevant legal systems.	*lex loci delecti* and *lex situs* are rules on choice of law i.e. is England defamation law or other country's defamation law is applicable

This procedure is not cost effective and may also delay the process of delivering justice because social media libel cases may have two conflicts i.e. conflict of substantive law and conflict of choice of law. For instance, in the *Annesley*[740] case, an English testator disowned his son in his 'will'. He later died in France but had acquired French domicile before his death. His son disputed the credibility of his will. Both, English court (his son was in England) and French court (the deceased acquired French domicile) had jurisdictions. The substantive law of England differs from substantive law of France. Under French law, son gets 2/3 of the property whereas, under English law, son gets nothing. Now applying private international law rules – under English probate law the 'will' is decided by the domicile (which is French) and under French probate law the 'will' is decided by nationality (which is England). This case represents a 'choice of law' conflict.

[739] Bogdan, M., (2012), 'Private international law as component of the law of the forum: General course', The Hague: Hague Academy of International Law, pp 71.
[740] *Davidson v Annesley* [1926] CH 692.

4.3.3.: Choice of Law:

The 'choice of law' decides the proper or applicable law. It is a process, which helps English courts to decide which of the competing laws apply to the case[741]. Defamation can take place in various jurisdictions at the same time. Hence, law of the cause would determine the characterisation because of the events took place in other jurisdictions (see-7-11). However, it is noted that the rules of *lex causae* are very complex to determine choice of law. So, when it will be applied to online cases along with the private international law rules, it will become even more complicated (see-7.13). Therefore, this chapter suggests the application of the rules of *lex fori* instead of *lex causae*. Auld LJ[742] also suggested that it can fruitfully be applied to classify a social media libel case.

Lex The forum law deals with the law of the country in which an action is brought (see-6.4.2). Therefore, if the claim is brought in an English court, it should be dealt under the Defamation Act 2013. Obviously, the defendant gets the right to challenge the jurisdiction (see-6.8.1). If the defendant submits to the English jurisdiction, then English laws must be applied. It may produce certainty and the verdict can be instantaneous. The effects of the classification of any dispute are to find a connecting factor. It is explained in detail below because it will determine whether if English courts allow forum shopping (see-4.6). Generally, cause of action for tort of defamation is determined under the law where the tort occurred.

4.3.3.1: *Lex loci delicti*:

The traditional rules of lex loci delicti determine the law of the place where the tort committed[743]. In the *Zhang*[744] case, the defendant was a French company and the claimant was domiciled in New South Wales. The court applied French law because the tort was committed in France. Nevertheless, the courts are bound to conduct 'forum

[741] Banu, R., (2017), 'A relational feminist approach to conflict of laws', Michigan Journal of Gender & Law, Vol 24, Issue 1, pp 1-15.
[742] *Macmillan v Bishopsgate Investment Trust plc* [1996] 1 All ER 585; Staughton LJ stated that if a case involves a foreign element, it becomes important to decide what system of law is to be applied (either to the case as a whole or to a particular issue or issues).
[743] *Williams v State Farm* [1994] 229 Conn. 359; the court held that the substantive rights arising out of a tort controversy are determined by the law of the place of (tort) injury.
[744] *Regie National Des Usines Renault Sa v Zhang* [2002] 210 CLR 491.

conveniens' test, which helps to identify whether the litigants are forum shoppers. The forum shopping is not about going and getting a result, but preventing people from transferring actions from one system to another[745]. Judge Jerome[746] refused the defendant's challenge on 'forum non conveniens' basis and decided that forum shopping means filing an action in a court which favours the claimant (see-2.7.2, 2.17.1, 6.9.1.2).

4.3.3.2: Practical implications of choice of law:

Undoubtedly, every country has the power to prosecute a foreigner who commits a crime, breaches the law or provides illegal service in that country[747]. However, cyberspace provides anonymity because it allows the users to obfuscate their identity and location, yet there is no mechanism to deny service to such users (see-2.10.2). Traditional legal system can only operate properly if the location or the identity of the defendant is known[748]. Hence, such internet users should not be provided with the service. (It is a broad topic and beyond the scope of this thesis).

The central question is how courts can fit the internet into the traditional legal framework of a jurisdiction. Being on social media, the users do not necessarily know what laws to follow. They only know the law of their country; however, they may not know the laws of the countries they will be interacting using Facebook or Twitter. In the case of misconduct, every internet user may want to be prosecuted according to their municipal laws. Under a traditional system, even if something is legal in a social media user's domicile, there is a possibility that he may be brought into court in a foreign country i.e. a user can be fined for something he believed was not misconduct in his country (see-7.15). In this era of social communication, the users can unwittingly open themselves to liability by sharing a post against the idea of Greater Israel, sharing women in miniskirts photos in Islamic countries, a tweet against the royal family, etc.

[745] *Lord Cooper in the case of Louisa Docherty v Secretary Of State* [2015] CSOH 149.
[746] *Sequa Corp v Aetan Casualty & Surety Co* [1990] C.A. No. 89-234-JRR.
[747] Banu, R., (2017), 'A relational feminist approach to conflict of laws', Michigan Journal of Gender & Law, Vol 24, Issue 1, pp 1-15.
[748] Rogerson, P., (2017), 'Economic torts in the conflict of laws', The Cambridge Law Journal, Vol 76, Issue 2, pp 240.

4.3.3.3.: Methods of choice of law:

The choice of law can be done in three ways[749]:

1. Expressed choice of law[750]
2. Implied choice of law[751]
3. Oral choice of law (irrelevant for social media defamation)

4.4.: The concept of jurisdiction:

Jurisdiction constitutes an important part of private international law, but this term does not have an official definition[752]. Its meaning was enhanced in the *Anisnimic*[753] case that "it is such an expression which is used in a variety of senses and connotations, and takes its colour from its context". Lord Reid[754] noted that it is a term having both broad and narrow sense. "It is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the inquiry in question". Generally, jurisdiction is regarded as the authority within a geographic boundary. It grants a court the power, which in terms may be extended to allow: (1) The police to arrest, (2) the claimant to serve a foreign defendant, (3) a judge to determine a case, (4) the jury to give its verdict and, (5) a judge to impose a penalty.

4.4.1.: Scholarly debate:

1. **Akehurst**[755] - considered jurisdiction from an international rather than an internal or constitutional perspective. He distinguished among executive,

[749] Law Commission (1990), 'Private international law: Choice of law in tort and delict', ISBN 0102065918, HC 65; Blom, J., (1981), 'Choice of Law Methods in the Private International Law of Contract', Canadian Yearbook of International Law, Vol 18, pp 161-200.
[750] Ferguson Shipbuilders v Voith Hydro GmbH [2000] S.L.T. 229; the court will take the literal meaning if there exists a choice of law clause in any dispute.
[751] Fentiman, R., (2010), 'International Commercial Litigation', (Oxford University Press, Oxford), pp 195; court can only infer implied choice if under the circumstances the parties may have added an express clause. It is mostly relevant contract cases however can be interpreted where the users agree to the terms of a social network not to publish derogatory material.
[752] It is derived from the Latin terms 'juris' and 'dicto', meaning "I speak by the law".
[753] *Anisnimic Ltd v Foreign Compensation Commission* [1967] 2 All ER 986 at 994.
[754] *Anisminic Ltd v Foreign Compensation Commission* [1969] 1 All ER 208.
[755] Michael, A., (1975), 'Jurisdiction in International Law', British Yearbook of International Law, Vol 46, pp 145–257.

judicial, and legislative jurisdiction in the sense of the power of a state to deal with cases having a foreign element

2. **Bantekas**[756] - discusses the exercise of jurisdiction among international criminal tribunals, the International Criminal Court, and national courts
3. **Bowett**[757] - explained jurisdiction as a manifestation of state sovereignty. He examines the legal and practical grounds for prescriptive jurisdiction. He viewed that the territorial, nationality, protective, and universality principles are the principle of a state to establish rules of behaviour of that state
4. **Cassese**[758] - discusses the relationship between the jurisdiction of international courts and tribunals and that of national courts, especially the issues of primacy and complementarity
5. **Mann**[759] - he pointed out that jurisdiction is an inherent power of a state to determine public international law. He believed that the question of whether court or judiciary has the power to decide particular case must be limited to public international law.
6. **Mann**[760] - reaffirms the position of Mann 1964, with a discussion of new developments both in theory and in practice
7. **Ryngaert**[761] - proposed theoretical basis to analyse jurisdiction. He discusses territoriality principle and the assertion of extraterritorial criminal jurisdiction.

The above explains that jurisdiction can be studied in various contexts. Lord Wilberforce noted, "It is an expression which is used in a variety of senses and connotations, and takes its colour from its context[762]". This thesis will view it from a legal perspective, which states that jurisdiction defines certain parameters of a court.

[756] Ilias, B., (2010), 'International Criminal Law' (4th Ed, Hart Publication, Oxford), Part 4 - Enforcement of International Criminal Law.
[757] Bowett, D. W., (1982), 'Jurisdiction: Changing Patterns of Authority over Activities and Resources', British Yearbook of International Law, Vol 53, Issue 1, pp 1–26.
[758] Antonio, C., (2007), 'International Criminal Law', (2nd Ed, Oxford University Press), Chapter 16 - International versus National Jurisdiction.
[759] Frederick, A., (1964), 'The Doctrine of Jurisdiction in International Law', Recueil des Cours, Vol 111, pp 1–162.
[760] Frederick, A., (1984), 'The Doctrine of International Jurisdiction Revisited after Twenty Years', Recueil des Cours, Vol 186, pp 9–116.
[761] Cedric, R., (2008), 'Jurisdiction in International Law', (1st Ed, Oxford University Press), pp 31.
[762] *Anisminic Ltd v Foreign Compensation Commission* [1968] UKHL 6 at 994.

4.4.2.: Definition of jurisdiction:

Based on the power of the court, jurisdiction can be divided into two categories: 'Specific and general' jurisdiction[763]. General jurisdiction is based on the relationship between 'court and defendant', whereas special jurisdiction is a link between 'court and the facts' of the case[764].

1. Specific jurisdiction is based on a link between the forum and the defendant, whose legal rights are involved. It mainly depends on a relationship between the court and some particular parts of the issues, which lead to the action[765]. Under the specific jurisdiction, the court can only start certain legal proceedings. For instance, in a cyber-claim, the issue may involve both defamation and cyberbullying; however, the court may only issue the proceedings for defamation claim.

2. General jurisdiction allows the court to employ its power to decide cases without limitation, adjudicating on any claim brought by or against the porosities[766]. The assumption of general jurisdiction over a defendant is irrespective of the legal nature of the action[767].

For cyberspace defamation, this chapter recommends the use of electronic jurisdiction, which can be defined for general as well as a specific purpose.

4.4.3.: Electronic jurisdiction:

Electronic jurisdiction can be based on the fact that social media sites should conduct the initial hearing and then refer the case to the relevant state court. To use electronic jurisdiction for a preliminary hearing, a standard technological setup is required. In the absence of standardisation, it poses yet another challenge because of the different technological levels in different countries. It depends upon the level of security,

[763] Arzandeh, A., (2017), 'The English Court's Service-Out Jurisdiction in International Tortious Disputes, Law Quarterly Review, Vol 133, pp 144-160.
[764] Hartley, T., C., (1984), 'Civil Jurisdiction and Judgments', (Sweet & Maxwell, London), pp 23.
[765] McClean, J.D., (1969), Jurisdiction and Judicial Discretion, ICLQ, Vol 18, Issue 4, pp 931.
[766] Banu, R., (2017), 'A relational feminist approach to conflict of laws', Michigan Journal of Gender & Law, Vol 24, Issue 1, pp 1-15.
[767] Kaczorowska, A., (2005), 'Public International Law', (3rd Ed, Routledge Cavendish, UK), Ch. 6.

reliability and requirement of the laws of that sovereign country[768]. Based on the variation in technological difference, for this thesis, the jurisdiction will be taken in the following contexts (see-4.4.1):

1. What is the origin of a court's authority (is it a family, juvenile or domestic court). So, 'jurisdiction rules' will help in determining if a cyberspace dispute can be brought within requested court.

2. What is a proper court for the cyberspace dispute at hand? An online dispute may occur in various forms and not every court may have expertise to decide cyberspace cases. So, 'jurisdiction laws' also help in determining proper court.

3. Does the court have inherent authority to declare a judgment i.e. a cyberspace dispute falls in many jurisdictions at the same time? A case can be brought against the same defendant in another jurisdiction as well. It is called 'concurrent jurisdiction', so, which court should declare the judgment? Hence, the jurisdiction will determine if a court has the inherent authority to hear a particular cyberspace dispute.

These points draw a distinction between 'existence' and 'assumption' of jurisdiction.

4.5.: Existence versus assumption of jurisdiction:

The existence of jurisdiction is pre-condition to assume jurisdiction[769]. Lord Hobhouse[770] established that "a court has jurisdiction to decide wrong as well as right. If it decides wrong, the wronged party can only take the course prescribed by law for setting matters right, and if that course is not taken, the decision; however wrong cannot be disturbed[771]". To exercise jurisdiction there must exist a personal jurisdiction, for example, a county court has the authority to resolve minor disputes, but it cannot

[768] Biegel, S., (2001), 'Beyond Our Control?', (1st Ed, MIT press, London), pp 55; for instance, defamation is a civil action in England; however, it is treated as a criminal issue in many countries.
[769] Hill, J., (2016), 'Clarkson & Hill's Conflict of Laws', (5th Ed, Oxford University press), pp 116; *Club Resorts Ltd v Van Breda* [2012] SCC 17; a court can only assume jurisdiction if the test of 'real and substantial connection' is satisfied. If the forum has a real connection with the dispute it implies that there exists a jurisdiction.
[770] *Malkarjun v Narhari* [1900] 27 IA 216.
[771] Speedy Trial- Rulings - www.harjindersingh.in, https://sites.google.com/site/hsinghjudgmentscom/speedy-trial--rulings [Assessed 18th August 2018]

assume jurisdiction in cyber-terrorism cases[772]. If the county court gives its judgment in cyber terrorism case it will be void because that court does not have the jurisdiction and the expertise to resolve cyberspace disputes.

4.5.1.: Jurisdiction versus place of suing:

On the basis of 'the place of suing', a court may have pecuniary, territorial and subject-matter jurisdiction[773]. Now trying a case without any of these jurisdictions will be an irregular exercise of jurisdiction or lack of jurisdiction[774] and the decision will be void. It shows that the 'place of suing' is not compulsory to have 'existence of jurisdiction'. The existence of jurisdiction is a statutory power granted to every court; it is a power inherently available to the legal authorities[775]. However, this power will only be considered appropriate once the court applies the rules of PIL to assume that jurisdiction. The claimant can bring a case to any court, but the court has to determine if it is the right place of suing. Whereas a 'place of suing' can be the locality where[776]:

1. The dispute occurred
2. The claimant resides
3. The defendant is domiciled

If the defendant is foreign-based, the claimant can request the court to allow the permission to serve outside the forum.

4.5.2.: Service out of jurisdiction:

If an English court is the 'place of suing', it does not allow that court automatic personal jurisdiction. A courts 'personal jurisdiction' can only be established if the defendant

[772] A court can only have authentic jurisdiction to decide a lawsuit if: (1) It have jurisdiction to try the case submitted, and (2) It must also have the authority to pass the order requested for.
[773] *AMT Futures Ltd v Marzillier* [2017] UKSC 13; the issue of law facing the Supreme Court to decide how to determine the proper place of a harmful event; previously courts assumed jurisdiction on the basis of 'actual harm'.
[774] The Supreme Court decided that the English courts did not have jurisdiction to decide the claim because the harm was suffered in Germany and overruled the decision of High Court on the basis of place of 'actual harm'.
[775] Lord Collins of Mapesbury, (2012), Dicey, Morris & Collins on the Conflict of Laws, (15th Ed, Sweet & Maxwell, London), Rule 34, at para 11.141.
[776] Ubi Jus Ibi Remedium – 'Where there is a right, there is a remedy'; the Common Law Procedure Act 1852.

submits and accept that courts authority (see-6.8.2). If the defendant is abroad, the court can follow the CPR rules to allow service outside (see-6.9). English court will have personal jurisdiction if (1) the defendant submits to the proceedings or (2) the defendant is served with a claim form during his physical presence in England. In the circumstance, if a personal jurisdiction cannot be assumed the court has discretion to serve proceedings out of jurisdiction, which will provide the required base for jurisdiction (see-7.3).

4.5.3.: Bases of jurisdiction:

International law provides following three bases to exercise jurisdiction (see-2.7):

1. Jurisdiction to prescribe - allows a state to apply its legal norms to conduct
2. Jurisdiction to adjudicate – enables a state to resolve the dispute, where the state has authority to prescribe the law that is sought to be enforced
3. Jurisdiction to enforce - allows a state to induce or compel compliance or to punish non-compliance with its rules or regulations (see-6.4.1).

These bases of jurisdiction are mostly relevant in public international law, where a state has direct involvement (see-2.8.1). Private International Law provides the foundation to exercise jurisdiction for transnational disputes between private parties (see-2.8.3). It is part of the domestic civil procedure of England, which also regulates cyberspace disputes[777]. The required personal jurisdiction to resolve online defamation claim is determined by using traditional English rules under CPR[778]. The revolutionist's literature states that traditional methods of jurisdiction are not suitable for the internet because of its nature and functioning (see-1.6, 2.9.1). They demand a separate 'cyber-law' for the resolution of cyberspace cases; however, the conservatives argue that traditional rules can be applied to exercise jurisdiction in the internet cases (see-1.5, 2.10).

A uniform and long-term online-jurisdiction solution could be obtained by forming an independent organisation.

[777] The Personal Jurisdiction, Choice of law and the recognition and enforcement of judgments are the areas of conflict under the law applicable to cyberspace.
[778] Traditionally jurisdiction is also of three types: (1) Legislative, (2) Adjudicative and (3) Enforcement jurisdiction.

It can analyse both sides arguments to establish an 'international treaty' – the findings of this organisation must be binding on every country. Domestic laws can be updated following the guidelines for cyberspace jurisdiction – which will help in achieving a unanimous universal long-lasting solution. It will be time-consuming and challenging to implement (see-1.5.1); hence, the focus is still on the traditional rules.

4.5.4.: Traditional jurisdiction bases:

Jurisdiction rules are provided in domestic laws; hence, they differ from state to state because of their different legal systems and judicial bases (see-6.4.3). In England, traditional jurisdictional rules are based on connecting factors: *locus delicti*, permanent residence, domicile and nationality of the claimant or the defendant (see-4.6). Before the widespread use of social media, there was a relatively established set of jurisdictional rules in PIL. Jurisdiction over civil cases involving foreign elements is determined by the jurisdiction bases adopted by that state. The 'bases' here refer to the subject/object of legal relations in civil cases involving foreign elements, or the connection between the facts of legal relations and where the court locates. Then, courts of a state will have jurisdiction over cases with such "bases." In other words, jurisdictional bases can be regarded as the reason why courts have the authorities to hear certain civil cases involving foreign elements[779]. For social media defamation, there may be a need to develop another common connecting factor because of dual nationalities and the harm suffered in more than one location (see-6.3).

4.6.: Connecting factor:

Currently, there exists no comprehensive treaty on defamation and the rules of private international law. Hence, in cyberspace defamation, there can be various applicable rules to assess the jurisdiction so the court has to act consciously, either to assume or to decline jurisdiction in online defamation cases[780]. The absence of a legal framework applicable to cyberspace allowed the courts to adopt the national laws. These laws are the same as applied to physical world disputes.

[779] Loble, S., (1997), 'Jurisdiction and Evidence: An English Perspective', ILSA J. Int'l & Comp. L., Vol 4, pp 489.
[780] Guzman, A. T., (2001), 'Choice of law: New foundations,' Geo. LJ, Vol 90, pp 883.

To test the applicability of PIL to cyberspace conflicts, this study will also analyse the existing substantial and procedural provisions regarding jurisdictional issues i.e. a clear distinction of the connecting factor is required. There exist three different connecting factors[781]:

1. Domicile
2. Nationality
3. Permanent Residence

It is arguable that the nationality or domicile; and even the presence of the claimant, are not directly relevant to the issue of jurisdiction[782]. This will be a significant advantage in assuming jurisdiction in social media defamation, which has may defendants/claimants (see-5.5.2.1). However, the physical presence, which also depends on the permanent residence of a defendant in cyberspace, could be an issue (see-2.3.1, 4.5.2, 6.9).

4.6.1.: Domicile or nationality:

Connecting factors which, produces fairness and convenience, are designed on two policies: (1) Administration of justice and (2) Predictability in litigation justice[783]. All the connecting factors may serve a similar purpose if employed in equal measure, but may not be applied in harmony for internet cases. For instance, connecting factor determines the jurisdiction and applicable law, but in electronic transactions these factors become vague[784]. The internet technological advances demands these traditionally applied connecting factors to be reshaped, especially for social media communication. In social media libel claims, 'place of damage' and 'place of uploading' of content is vitally important which is independent of the domicile or nationality of the litigants? Besides, this informational medium is portrayed as an interactive, fluid and dynamic medium (see-2.1). It is penetrated in everyday life by revolutionising social relationships, methods of communication and news

[781] Kohl, U., (2017), 'Conflict of Laws and the Internet' in Brown sword, Scotford and Yeung (eds.), the Oxford Handbook on the Law and Regulation of Technology (Oxford University Press, UK), pp 269-296.
[782] Hook, M., (2017), 'The "statutist trap" and subject-matter jurisdiction', Journal of Private International Law, Vol 13, Issue 2, pp 435.
[783] Szaszy, S., (1966), 'The Basic Connecting Factor in International Cases in the Domain of Civil Procedure', International and Comparative Law Quarterly, Vol 15, Issue 2, pp 436-456.
[784] Hayward, R., (2006), 'Conflict of Laws', (4th Ed, Cavendish Publication, London), pp 3.

consumption[785]. Its inherently global nature allows its users, regardless of cultural or financial backgrounds, to consume or distribute information around the world easily, instantaneously, simultaneously, and permanently and at a low cost (see-2.5.1.2). Connecting factor decides what is the proper law (personal law), applicable to the issue in hand.

4.6.2.: Personal law:

Personal law may be identified in following three ways[786]:

1. The law of domicile
2. The law of nationality
3. The place of the act i.e. *lex-actus* or the place where the contract concluded i.e. *lex-loci-contractus*; the place where the obligations of the contract have been fulfilled i.e. *lex-loci-solutionis*; the place where the subject matter of the dispute belongs to i.e. lex-situs; or the place where the dispute arose i.e. *lex-fori*[787].

It is debatable that why not apply the law of the forum rather than applying foreign law? Cheshire and North[788] highlighted that if the domestic law provides a more convenient solution to the problem, according to the expectation of the parties, then English judges should give effect to domestic law. On the other hand, where it is necessary to serve the interest of the parties and to achieve justice, the foreign law should be applied. In the *Re-Bonacina*[789] case, the court established that the English courts will apply the Italian law to do justice between the parties[790]. However, if the application of foreign law is contrary to public policy it may not be applied. Justice Cardozo[791] noted that a judge

[785] Mehren, V., Taylor, A., (2002), 'The foundations and emergence of jurisdictional theory', Collected Courses of the Hague Academy of International Law, The Hague Academy of International Law, Vol 295.
[786] Morris, J., Freund, O., Mann, M., (1979), 'Dicey and Morris on the Conflict of Laws', (9th Ed, Stevens & Sons Ltd, UK); Dicey, A., Morris, J., (1967), 'Dicey and Morris on the conflict of laws', (8th Ed, Stevens, UK), pp 138.
[787] Stewart, D., (2009), 'Private International Law: A Dynamic and Developing Field', University of Pennsylvania Journal of International Law, pp 1121-1131 .
[788] North, P., Fawcett, J., (1999), 'Cheshire and North Private International Law', (13th Ed, OUP, Oxford), pp 32.
[789] *Re Bonacina* [1912] 2 Chapter 394.
[790] Fawcett, J., (1991), 'The Interrelationships of Jurisdiction and Choice of Law in Private International Law', Current Legal Problems, pp 39.
[791] Goodrich, A., (1938), 'Foreign Facts and Local Fancies', Law Review, Vol 26.

may reject the application of foreign laws if it violates fundamental principles of justice or prevalent concept of good morals[792].

Personal law is one of the connecting factors which provides the base for characterising applicable law (see-4.3.2.2). Two different views have crystallised among academics and legal practitioners on the application of contemporary physical world-oriented connecting factors to disputes arising out of the use of social media. Some of the scholars[793] focus on the opinion that the emergence of this technology suggests a need to adopt, often complex, technology-specific connecting factors, whereas others hold the opinion that the traditional 'technology neutral criteria' which is based on the existence of the 'geographical borders' and 'physical presence' are still applicable to online communication.

4.7.: Which Jurisdiction should prosecute?

This chapter identifies that there is a need for a preliminary presumption of jurisdiction involving online defamation, to bring consistency to the decision-making process. The prosecution must take place in the country where: (1) the majority of the libel published or (2) the claimant suffered most of the loss to his reputation[794]. In any online defamation, there are some factors, which can affect the final decision. In the claims involving celebrities/ public figures, the judge must balance all the factors, both for and against commencing prosecution in each jurisdiction.

Some of the factors may require extra considerations[795]:

1. The location of the defendant
2. The possibility of trial in the jurisdiction where enforcement of decision is possible
3. The capacity of the other competent court
4. Dividing the prosecution into cases in two or more jurisdictions

[792] Monard, G., Paulsen, & Michael, I., (1959), 'Conflict of Laws', Columbia Law Review, Vol 56, Issue 7.
[793] Marton, E., (2016), 'Violations of Personality Rights through the Internet: Jurisdictional Issues under European Law' (1st Ed, Nomos, Baden-Baden), Ch. 1.
[794] Annex A - Eurojust Guidelines, Annual Report 2003, Making the Decision - http://www.cps.gov.uk/legal/h_to_k/jurisdiction/#an03 [Assessed 12th December 2018]
[795] *Amin Rashid Corp v Kuwait Insurance* [1984] 1 AC 50 at 65G; as per Lord Diplock.

5. The attendance of witnesses
6. If an international witness is unable to attend, the possibility of the court receiving evidence by alternative means: Written or remotely (by telephone or video-link)
7. Are the witness willing to travel and provide evidence in another jurisdiction
8. Delay - justice delayed is justice denied
9. Interests of the claimant
10. Evidentiary problems
11. Legal requirements

4.7.1.: Resources and costs of prosecuting:

The costs of the trial, or its impact on the resources, is only a factor in deciding whether a case should be prosecuted in one or other jurisdiction. Therefore, competent English courts should not refuse to accept a case in their jurisdiction because the case does not interest them.

4.8.: Summary:

Private international law principles are used to identify the issue in the case not the cause of action[796], which is determined by classification. The process of classification is based on proper law. The proper law is based on the underlying principle of which is to strive for comity between competing legal systems[797]. Whereas, jurisdiction is a gateway for any grievance to enter the portals of the dispute settlement fora and be transformed into litigation[798]. It is described and understood subjectively because there is no standard definition of jurisdiction. English courts will have to apply conflict of laws to determine whether they have jurisdiction to hear a case and which country's law to apply i.e. classification of cause of action to find the governing law[799].

[796] *Caretech Community Services Ltd v Berry and Ors* [2017] EWHC 1944 (QB); this case interpreted the meaning of CPR r. 6.15(2) whether rule can apply to cases where there are errors of both method and place of service, whether the rule applies to cases of 'Non-service'.
[797] Dicey, A.V., Morris, C., & Collins, A., (2012), 'The conflict of laws', (Vol 1, Sweet & Maxwell, London), pp38-43, 45-48.
[798] Hill, J., (2004), 'Choice of Law in Contract under the Rome Convention: The Approach of the UK Courts', International and Comparative Law Quarterly, Vol 53, pp 325-350.
[799] Fentiman, J., (1992), 'Foreign Law in English Courts', Quarterly Law Review, Vol 108, pp 142.

4.8.1.: Conclusion:

Private international law rules provide efficient resolution if operated within the sovereign physical boundaries. That is where the difficulties arise for decision makers because cyberspace disregards physical borders[800]. This leads to various practical difficulties once traditional rules apply to social media disputes. Although jurisdiction is the major concern, however, it is also not a simple matter to keep a striking balance between defamation and freedom of expression. Afia[801] argued that the required balance between defamation protection and the right to free expression is compulsory. It is discussed in Chapter 5. This chapter finds that the classification of proper law can be constrained by particular distinctions of the domestic law of the competing system of law. It concludes that the alleged issue should not be defined too narrowly so that it attracts a particular domestic rule under the *lex fori*, which may not be applicable under the other system[802]. Overall, traditional rules are capable enough to be applied to online defamation.

[800] Goldsmith, J. L., (1998), 'Against Cyber-anarchy', The University of Chicago Law Review, Vol 65, Issue 4, pp 1199-1250.
[801] Afia, J., (2011), 'Tipping the Balance', New Law Journals, Vol 376, Issue 7457, pp 161.
[802] Torremans, P., (2017), 'Cheshire, North and Fawcett: Private International Law', (15th Ed, Oxford Uni press), part 2 – preliminary topics.

CHAPTER 5

TORT OF DEFAMATION

PART A: Defamation Law

PART B: Libel in social media

Chapter 5

Part A

Defamation Law

5.1.: Overview:

The pre – cyberspace era: Defamatory material could only be produced within certain parameters. It was easy to identify perpetrators and trace their locations. Cyberspace has changed this world into an information village (see-2.2, 2.6) because any publication can be accessed from virtually anywhere[803]. Defamation, libel or slander (see-5.3), is a tort that is particularly vulnerable to creating a multiplicity of jurisdictions[804]. Social media defamation makes application of existing rules much harder, so the judgments cannot be consistent (see-2.7.2, 7.8).

The post – cyberspace era: Defamation claims are difficult to frame[805] and cost-effective[806]. Social media makes its users potential publishers[807], regardless of their intentions[808] (see-7.15). Online communication is mostly revealing and autobiographical but it still carries the risk of libel claims. It can be retransmitted because of its global accessibility, regardless of the context in which it was initially uploaded (see-7.17). For instance, in the *Dabrowski* [2014][809] case, the wife had to pay damages for a Facebook post, which she mistakenly posted, and later deleted (her argument about 'context' of her statement were rejected). Similarly, Tugendhat J[810] determined that Bercow's tweet carried a defamatory meaning. Even though, Bercow believed her tweet was not defamatory at the time of sharing (with regards to its context). This judgment also highlights that a simple autobiographical opinion may also

[803] Sharma, V., (2000), 'Information Technology – Law & Practice', (3rd Ed, Universal Law Publishing, IND), pp 420.
[804] Bigos, O., (2005), 'Jurisdiction over Cross-Border Wrongs on the Internet', The International & Comparative Law Quarterly, Vol 54, Issue 3, pp 585-620.
[805] *Ahuja v Politika* [2015] EWHC 3380; S9 raised the bar for claimants.
[806] Gibson, J., (2015), 'From McLibel to e-Libel: Recent issues and recurrent problems in defamation law'; Online Url: http://www.districtcourt.justice.nsw.gov.au/Documents/Speeches/From%20McLibel%20to%20e-Libel%20(correction)%20-%20Recurring%20problems%20in%20Defamation%20Law.pdf [21st March 2018].
[807] *Elliot v Tomkins* [2014] NSWDC 55; if a damage to reputation is caused then intention becomes irrelevant.
[808] Intention does not matter if damage to reputation can established. What matters is ordinary readers or viewers understanding of the alleged statement.
[809] *Dabrowski v Greeuw* [2014] WADC 175.
[810] *McAlpine v Bercow* [2013] EWHC 1342 (QB).

be interpreted as defamatory. The context in which information is shared varies once it is consumed by a third party[811]. Even revealing social interactions via social media can be interpreted from a culturally distinct perspective[812]. Internet service is remotely available via smart devices, which makes it even easier to take a photograph, tagged with personal information and transmit to other users[813]. In most cases, many of those recipients may be unknown to the sender but carry high risks of reputational harm. Mark Zuckerberg[814] also admitted that the internet creates an environment where we are aware of speech we would not hear otherwise. Social media communication permits a crossing to formerly closed communities because we would not have heard the jokes told in male-dominated locker rooms before the internet.

5.1.1.: Changes in defamation laws:

Unlike traditional media, social media sharing does not allow to stop an unfavourable post from going 'viral' (see-2.10). This unique distribution allows a defamation to cross borders instantaneously[815]. This feature was not available for reputational harm caused via traditional media, hence the ambit of traditional defences is also uncertain[816]. It also makes proceedings as complex as they are expensive[817] for both parties[818]. It had been widely argued that even pre-internet, defamation laws were confusing and most of the rules did not make sense[819] when applied to social media. For instance, the inclusion of Section 5 indicates that pre-internet defamation laws were 'not well suited to dealing with the internet and modern technology'[820]. Including the 1996 Act, most of the other laws were not only out of date, but also costly and over-complicated. These claimant-

[811] *Hoffman v Washington Post Co* [1977] 433 FSupp, 600 D. D. C.
[812] *Webb v Bloch* [1928] 41 CLR 331 at 363.
[813] *Mickle v Farley* [2013] NSWDC 295, As per judge Michael Elkaim, "defamatory publications made on social media spread by simple manipulation of mobile phone and computer".
[814] Zuckerman, E., (2014), 'Susan Benesch on dangerous speech and counter-speech, Blog; Online URL http://www.ethanzuckerman.com/blog/2014/03/25/susan-benesch-on-dangerous-speech-ndcounterspeech/ [Assessed 12th November 2018]
[815] Mills, A., (2015), 'The Law Applicable to Cross-Border Defamation on Social Media: Whose law governs free speech in Facebookistan?', Journal of Media Law, Vol 7, Issue 1, pp 1-35.
[816] Section 3 (8) of the Defamation Act 2013 abolished common law fair comment defence and introduced the honest opinion defence.
[817] http://www.brettwilson.co.uk/defamation-privacy-online-harassment/defamation/ [Assessed 2nd May 18].
[818] Gibson, J., (2014), 'It came from Cyberspace: Defamation Law and the Internet', NSW State Legal Conference: Session 16.
[819] Christie, G.C., (1977), 'Defamatory Opinions and the Restatement of Torts', Michigan Law Review, Vol 75, Issue 8, pp 1621-1643.
[820] Clarke, K., (2012), 'Parliamentary Debates, House of Commons', Vol 546, col 177.

friendly rules allowed 'forum shopping', hence there was a 'risk of damaging free-speech without affording proper protection'[821]. The idea of defamation laws is to maintain a fair balance between 'freedom of expression', 'individual privacy', and 'personal reputation' – which is enshrined in Article 17[822].

5.1.2.: The objective of this chapter:

This chapter aims to understand whether the Defamation Act 2013 provides sufficient protection to social media users against the loss of reputation. It is only possible with the corollary imposition of a duty on social media users not to infringe other's right or interest[823]. This analysis evaluates whether common law rules strike an appropriate balance between individuals' rights to speech and reputation. This chapter will serve an obligation to subject the defamation laws to scrutiny and analyse whether application of existing law to social media, accords with community standards of justice and public policy.

5.2.: The concept of defamation:

> "People should be free to poke fun at one another without fear of litigation. It is one thing to ridicule a man; it is another to expose him to ridicule - Neil LJ[824]".

Law of tort seeks to redress injury to person and injury to property[825]. Injury to a person can be physical or non-physical, but defamation is a tort which allows an action for non-physical injury[826]. The core of defamation law is to strike a balance between protection of reputation and freedom of speech[827]. The roots of defamation laws can be traced back to the 17th century, which have been amended according to societal needs[828]. The advancement in information technology and over-reliance on social media

[821] Turner, R., (2014), 'Internet Defamation Law And Publication By Omission: A Multi-Jurisdictional Analysis', UNSW Law Journal, Vol 37, Issue 1, pp 34-64.
[822] Article 17 of the International Covenant (Civil and Political Right) states: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation".
[823] Descheemaeker, E., (2009), 'Protecting Reputation: Defamation and Negligence', Oxford Journal of Legal Studies, Vol 29, pp 608–10
[824] *Steven Berkoff v Julie Burchill & Times Newspapers Limited* [1996] Ewca Civ 564.
[825] *Sim v Stretch* [1936] 2 All E. R. 237.
[826] Section 15, the Defamation Act 2013 defines a 'statement' as 'words, pictures, visual images, gestures or any other method of signifying meaning'; which can only cause a reputational harm.
[827] *CSI Manufacturing Ltd v Dun and Bradstreet* [2013] IEHC 547.
[828] English defamation law has been occasionally amended (in 1840, 1880, 1952, 1996 and 2013) by legislation; Libel Act 1843, Libel Act 1845, Newspaper Libel and Registration Act 1881, Law of Libel

mean that new guidelines are required to be implemented[829]. A claim for defamation arises if a social media user posts something, which contains an untrue imputation of another user[830]. Defamation will be materialised if such publication undermines the reputation of 'concerned entity' in the eyes of right-thinking members of society by exposing him to hatred or ridicule[831]. A publication may be in the form of a video, sketch, photo, blog, article[832] or even a statement, which may not have any legal justification. Lord Halsbury[833] noted that a statement is defamatory if it attacks and injures the reputation of the person referred and exposes him to hatred and ridicule or it causes him to be avoided or has the propensity to injure him in his society, profession or calling.

If a defamatory post is uploaded but another user expressly or implicitly encourages defamatory comments from other users, he becomes a principal perpetrator (see-718). If he impliedly endorsed to publish, repeat or create defamatory statements, he becomes a secondary perpetrator[834]. Dixon J[835] concluded that by repeating publication of defamatory material on its website Bauer Media behaved recklessly. Even if social media users do not willfully behave recklessly during publishing statements, there are still risks. This potential risk is because social media users do not have editors and lawyers to check their publication before posts go live (see-7.15).

5.2.1.: Definition:

Defamation is an intentional false communication which injures others respect[836]: "A false, unprivileged statement of fact that is harmful to someone's reputation and

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Amendment Act 1888, Defamation Act 1952, Defamation Act 1996 and Defamation Act 2013; Collins, M., (2014), 'Collins on defamation', (1st Ed, Oxford university press), pp 5.

[829] Wilson, T., (2015), 'Twitter and Facebook users need grasp of defamation law', available online at: http://www.mancunianmatters.co.uk/content/290473309-twitter-and-facebook-users-need-grasp-defamation-law-says-manchester-solicitor [Assessed 24th July 2017]

[830] *Wilson v Bauer Media Pty Ltd* [2017] VSC 521; defamation is primarily a publication of wrong or degrading particulars about another person.

[831] Howard, S., (2007), 'Defamation of Corporate entities in England', Bird & Bird, available online at www.lexology.com [Assessed 25th July 2017]

[832] *Hiranandani-Vandrevala v Times Newspapers Ltd* [2016] EWHC 250 (QB); Jill Bainbridge noted that it is important to look at the article as a whole to establish defamation.

[833] *Nevill v Fine Art and General Insurance* [1897] AC 68.

[834] *Pritchard v Van* [2016] BCSC 686; the user who re-posted the comments was held liable for others comments as well.

[835] *Wilson v Bauer Media Pty Ltd* [2017] VSC 521.

[836] Garner, B., (1990), 'Black's Law Dictionary', 6th Ed, pp 449.

published 'with fault' meaning as a result of negligence or malice[837]". A more modern explanation comes from Lord Atkin[838] where he requested their Lordships to lay down the following formal defamation test: "Would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally?".

5.2.2.: Examples of defamatory statements:

The law of England allows internet users to express their honestly-held opinions[839]. If the shared opinions are based on unfounded claims they can become serious allegations and the perpetrator may have to face legal repercussions. The judge will determine[840] if the ordinary natural meaning of the 'alleged statement' can damage claimant's reputation[841]. A statement which has any of the following may be considered defamatory:

1. Alleging another user of disloyalty, corruption or dishonesty
2. Accusing someone to have committed or suspected of committing something illegal
3. Ridicule other social media user
4. Nominating somebody in a way which causes that person to be avoided: Associating him with a contagious disease or mental illness.

5.3.: Types of Defamation:

Defamation can be sub-divided into three categories:

1. Category according to prosecution – civil and criminal defamation
2. Category according to publication – online and print media defamation
3. Category according to legal basis – defamation of libel and slander

[837] Winfield & Jolowicz, (2014), 'Law of Tort', (19th Ed, Sweat & Maxwell) Ch. 12, pp 390-461.
[838] *Sim v Stretch* [1936] 2 All ER 1237, 1240; as per Lord Atkin.
[839] Calling someone dishonest, corrupt, hypocritical, lazy, incompetent, criminal, unfaithful, or financially troubled; all are potential defamations unless a viable defence is accepted.
[840] It includes what ordinary readers or viewers see or hear "between the lines" - reasonable man test.
[841] *Safeway plc v Tate* [2001] The Times LR.

Criminal defamation is actionable in countries where it is an offence under the criminal law of that country[842]. The alleged defendant (social media or offline), will be charged by prosecutors, tried in the criminal legal system. If the defendant is proven guilty, he will be convicted and may be sentenced to imprisonment. In England, defamation is a civil offence and a private libel action will be brought in civil courts for financial compensation or an injunction.

Common law recognises two forms of civil defamation: Libel or slander. The difference between these two lies in the means of the medium used to communicate. Traditionally, written or printed statements were considered libel and spoken words were considered slander[843]. Nowadays, if 'publication' is in a permanent form, it will be libel. Otherwise, it will be a slander. Slander is a transient form of communication (spoken words). Libel is a permanent form[844] of communication (written words) (see-5.6).

5.3.1: Libel:

It is defamation in permanent form and visible as established by Slesser LJ[845], 'any permanent matter capable of being seen by the eye', including written items, email, pictures, statutes or effigies, comments, articles. It is actionable per se and the claimants do not have to prove special damage. However, Section 1 introduced the threshold of serious harm which implies that the presumption of reputational harm is rebutted[846]. Lopes LJ[847] noted that libels are generally in writing, but this is not necessary because it can be conveyed in another permanent form - a statue, chalk marks, wax images, caricature, effigy, pictures or signs may constitute a libel. It may be tangibility of the statement that matters; however, concerning social networking sites, it has been approved that any statement, videos, symbols, recordings or even emoji's via social

[842] Criminal Libel (Law Com No 84, 1982); the Law Commission Working Paper abolished criminal defamation in the UK.

[843] *Thorley v Kerry* [1812] 12 ER 371; Mansfield CJ identified that a speech in London and an assertion in public place is different from what is printed in letter or newspaper.

[844] Along with common law, the following Acts explain what constitutes publication in a permanent form for the purpose of libel [Section 166(1) of the Broadcasting Act 1990, sections 4(1) and (3) and (7) of the Theatres Act 1968, formerly Section 1 of the Defamation Act 1952 and the Defamation Act 2013.

[845] *Youssoupoff v Metro-Goldwyn- Mayer Pictures Ltd* [1934] 50 TLR 581; words become defamatory if they cause claimant to be shunned and avoided.

[846] Defamation Act 1996 presumes that when a person's reputation is assailed, some damage must be resulted.

[847] *Monson v Tussauds* [1894] 1 QB 671.

media are also libel[848]. Lord Tugendhat[849] decided that inferences drawn from 'emoticons' used on social media could also have libel meanings.

5.3.2.: Slander:

Defamation in a temporary or transient form is slander, where publication is in the form of spoken words or gestures. Slander is only actionable per se upon the actual damage, so the claimant has to prove damage to succeed in slander claim[850]. (It is not within the scope of this thesis)

5.3.3.: Special considerations for social media:

1. **Libel or slander:**
   Social media has blurred the difference between libel and slander[851]. Generally, libel is in permanent form whereas slander is spoken[852]. However, for social media publication, it is settled that defamatory statements made on the internet are to be regarded as libel[853].
2. **Chat rooms:**
   Social media publications and comments via emails or websites are libel. Whereas, casual conversations and discussion in 'chat-rooms' and 'bulletin-boards' may be considered slanderous[854]. Interestingly, *Smith* [2008] [855] decided that online casual conversation are not actionable, which drastically deviates from the famous ruling in *Godfrey* [2001][856] that Usenet publications were defamatory. It has been debated that online communication should be treated as slander[857] (this distinction is beyond the scope; however a relevant analysis is conducted in opinion section see-5.5.1).

[848] Seidenberg, S., (2017), 'lies and libel', ABA Journal, Vol 103, Issue 7, pp 48.
[849] *McAlpine v Bercow* [2013] EWHC 1342 (QB).
[850] Price, D., & Duodo, K., (2009), 'Defamation Law: Procedure & Practice', (4th Ed, Sweat & Maxwell eBooks), Part 1 - Slander claims and special damages, pp 25, 72 – 99.
[851] Nawang, N., Asari, K., (2014), 'Cyber Defamation: A Comparative Analysis of the Legal Position in Malaysia and the United Kingdom', The International Conference on Information Security and Cyber Forensics.
[852] Kay LJ in *South Hetton Coal Company Ltd v North-Eastern News Association Ltd* [1894] 1 QB 133.
[853] Charles, W.M., (2018), 'Difficulties in Establishing Liability in Online Defamation: Tanzania Experience', International Journal of Law and Public Administration, Vol 1, Issue 1, pp 48-57.
[854] *Nigel Smith v ADVFN Plc and others*[2008] EWHC 1797(QB).
[855] *Nigel Smith v ADVFN Plc and others*[2008] EWHC 1797(QB); *Clift v Clarke* [2011] EWHC 1164.
[856] *Godfrey v Demon Internet Ltd* [2001] QB 201.
[857] Reynolds, G., (2007), 'Libel in the Blogosphere: Some Preliminary Thoughts', Social Science Research

3. **Publication:** Hyperlinks, emoticons, additional text or hashtag, a tweet or post that offers a link to a defamatory publication fall within the definition of publication[858]. This is regardless of whether a person is publishing or republishing. A user who repeats a defamatory allegation made by another is treated as if he had made the allegation himself[859]. However, content providers are not publishers[860]. The court stated on numerous occasions that content providers had no control over deciding the search terms that were input by the search engine users or provided the content in any meaningful sense (see-5.9.1.1, 7.8).
4. **Emoticons:** A tweet/post suffixed with an emoticon could be defamatory[861]. In the context of postings made via social media sites, individuals can express themselves in different ways, such as by posting funny pictures or using emoticons in addition to the text that they publish (see-7.18).

5.4.: Characteristics of defamation:

"Law recognises in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements to his discredit; and if such false statements are made without lawful excuse, and damage results to the person of whom they are made, he has a right of action - Cave J.[862]"

Over the years, defamation laws have been reformed according to societal needs; however, its fundamentals have not changed in decades[863]. Traditional principles can still be applied to virtual defamation claims arising from social media. Social media possess the ability of multiplier effects because a publication can pass from a user's friend list to those friends' friends[864]. Its adverse effects could be more aggravating if defendant's privacy settings are set to public, where communication is potentially

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Network, Vol 16, pp 1164 – 1166; Ciolli, A., (2006), 'Defamatory Internet Speech: A Defense of the Status Quo', QLR, Vol 25, pp 853.

[858] *Hird v Wood* [1894] 38 SJ 23.

[859] *Safaricom Ltd v Porting Access* [2011] EKLR no 167; sharing, re-tweeting amounts to re-publication.

[860] *Metropolitan International Schools v Designtechnica Corporation* [2009] EWHC 1765; Google Inc was held not to be a publisher of a defamatory statement that could be located through a keyword search (for keywords relating to a defamatory statement) of its search engine.

[861] *McAlpine v Bercow* [2013] EWHC 1342 (QB); 'innocent face' or emoticon can be understood by the reasonable reader to mean being insincere and ironical.

[862] *Scott v Sampson* [1882] 8 QBD 491, at 503.

[863] *Cianci v New Times Pub* [1980] 639 F.2d 54; republishing libel may create liability even when the statement is attributed to another publisher. It is also applicable to retweeting or resharing via social media.

[864] Laidlaw, E., (2017), 'Are We Asking Too Much from Defamation Law? Reputation Systems, ADR, Industry Regulation and Other Extra-Judicial Possibilities for Protecting Reputation in the Internet Age', University of Calgary law review, SSRN no 3059954.

viewable to everyone[865]. This modern method of communication has caused judges to raise the question whether traditional principles are suitable enough in the context of social media defamation to preserve the boundaries of civil justice (this question also reflects objective of this thesis).

There exist state-to-state variations in characterising the objectives of defamation provisions. This thesis will use some of the customary characteristics of deformation as used within common law countries.

A user may be considered defamed if[866]:

1. A publication is directed towards one or more users
2. At least one more users, other than the claimant, has noticed the defamatory material
3. A reasonable member of society, familiar with the statement would think less of the victim based on what is being posted i.e. lowering the reputation of the victim (see-5.5.1).

5.4.1.: The requisite elements:

It is important to note that, if a statement is 'a truth', it may be an absolute defence to a defamation claim[867]. Hence, the shared statement has to be a false statement of fact and it should refer to the claimant and harm his reputation[868]. If the alleged material is "only published" to the claimant and nobody else accessed it, it will not be defamatory because the claimant is not defamed in other's eyes[869]. If the defamed person is a public figure, he/she must also prove actual malice (see-2.15.2). If a claimant is unable to prove actual malice, there are other potential causes of action available including, misuse of private information; breach of confidence - where there has been a breach of

[865] *Pritchard v Van* [2016] BCSC 686; along with Facebook's substantial settings menu, it also provide a user-friendly guide via vital privacy settings by 'Click on' the question mark symbol in the top right page, and select Privacy Check-up. Alternately, user can adjust who can see posts, send friend requests, or block users by hitting the question mark symbol and selecting Privacy shortcuts.
[866] Golberg, D., (2013), 'To Dream the Impossible Dream? Towards a Simple, Cheap (and Expression-Friendly) British Libel Law', Journal of International Media & Entertainment Law, Vol 4, Issue 1, pp 32-55.
[867] Although it may still be difficult and expensive to prove because under Defamation Act 2013 the burden of proof is on defendant (see-2.17.2).
[868] *Monroe v Hopkins* [2017] EWHC 433 (QB) at [23].
[869] Troiano, M. A., (2006), 'The New Journalism? Why Traditional Defamation Laws Should Apply to Internet Blogs', American University Law Review, Vol 55, Issue 5, pp 1447-1483.

privacy or confidence; harassment - it may also give rise to criminal liability[870]. Similarly, where defamation action is not viable, cyberbullying and the claim for malicious falsehood could be used in conjunction with the defamation claim because the courts allow the possibility of running a defamation case in tandem with data protection claim[871].

In a defamation case, the following elements must exist[872]:

1. The A harmful statement concerning the claimant must be published to third parties[873]
2. Publication of the alleged statement must cause claimant public embarrassment, professional or financial suffering
3. The publication is made without adequate research into the truthfulness of the statement

If these elements are present and claimant's honour is reduced in the social estimate of his community, a private claim in defamation is possible.

5.5.: The cause of action for defamation:

Cyberspace users should understand defamation laws because their publication on social media could potentially form the basis of a defamation action[874]. The onus of proof is on the defendant but the claimant has to prove that the alleged statement lowered his reputation[875]. It is treated as an action rather than the consequence of an

[870] Conay, J., (2017), 'Risks of unlawful social media content: Changes in UK defamation landscape and what you need to know', Social Media Law, Bulletin, online in defamation & privacy.
[871] *Prince Moulay Hicham Ben Abdallah Al Alaoui of Morocco v Elaph Publishing Ltd* [2017] EWCA Civ 29.
[872] Elizabeth, S., (2013), 'Internet Defamation Law', Legal Education Society of British Columbia CLEBC, Paper 9.1.
[873] *Modi v Clarke* [2011] EWCA Civ 937.
[874] Karen, E., (2018), 'Is 'Truthtelling' Online Reasonable? Restoring Context to Cyber Defamation Analysis', McGill Law Journal, Vol 63, Issue 3; in social media boundaries are porous and shifting so data becomes global, a cyber-publication in one jurisdiction may be read and reposted anywhere in the world, thereby potentially causing reputational harm transcending traditional or national parameters.
[875] Wilson, T., (2015), 'Twitter and Facebook users need grasp of defamation law', available online at: http://www.mancunianmatters.co.uk/content/290473309-twitter-and-facebook-users-need-grasp-defamation-law-says-manchester-solicitor [assessed 24th July 2017].

action[876]. The court established in the *Dinyer-Fraser*[877] case, that defamation is a tort of strict-liability and the defendant will be liable for conveying defamatory words to the third party. It is interesting that once a defamatory statement transmitted via social media, the defendant will be liable regardless, he acted negligently or intentionally (see-5.5.2.2), as long as the cause of action can be established[878].

Under the Defamation Act 2013, the claimant has to prove the following elements to establish 'a libel cause of action' against an online content[879]:

1. It must be defamatory by meanings
2. It must be a false statement of facts
3. It must refer to the claimant
4. It must be published to a third person
5. It must cause serious harm

5.5.1.: The statement must be defamatory:

May CJ[880] elaborated that it is not the question to argue what the defendant intended by his statement. It is important to note what meanings an intelligent and reasonable person naturally draws from those words[881]. Therefore, word's meaning and inference have more value in deciding defamation cases than defendant's intention. The statement must be defamatory in its natural meanings because some words can have more than one meaning[882]. In the *McAlpine* [2013][883] case, the court noted that it is the true and natural meaning, which counts, not the literal meaning of words. If the true meaning does not convey a defamatory sense the claim will be rejected[884]. Lord Selbourne[885] rejected a

[876] Samson, E., (2012), 'The Burden to Prove Libel: A Comparative Analysis of Traditional English and U.S. Defamation Laws & the Dawn of England's Modern Day', Cardozo Journal of International & Comparative Law, Vol 20, Issue 3.
[877] *Dinyer-Fraser v Laurentian Bank* [2005] BCSC 255.
[878] Zipursky, B. C., (2016), 'The Monsanto Lecture: Online Defamation, Legal Concepts, and the Good Samaritan', Valparaiso University Law Review, Vol 51, Issue 1, pp 57.
[879] Mullis, A., & Scott, A., (2014), 'Tilting at windmills: The defamation act 2013', The Modern Law Review, Vol 77, Issue 1, pp 87-109.
[880] May CJ in the case of *Bolton v O'Brien* [1885] 16 LR 97 at 108.
[881] *Monroe v Hopkins* [2017] EWHC 433 (QB) at [23].
[882] Defamatory meaning depends on whether it would tend to have a substantially adverse effect on the way that right-thinking members of social media would treat the claimant.
[883] *McAlpine v Bercow* [2013] EWHC 1342 (QB).
[884] *Vogel v Felice* [2005] C A, 6 Dis, No H024448.

libel claim because 'true natural meaning' of the words did not convey a defamatory message. Arguably, if a statement is shared via social media, it will be accessible to many users and someone might find its defamatory meaning. In the Slim[886] case, the court concluded, "The important thing which matters is if the trial judges understand the statement bears defamatory meaning". However, without a jury trial, it is all subjective to the judge's understanding: Some public figures may have billions of followers in various jurisdictions so they still can suffer reputational damage without a defamatory sense of a statement!

To succeed in a libel claim, the alleged statement must not only be defamatory, but it must also bring disrepute to the defendant[887]. In the *Liberace*[888] case, the court determined 'natural and ordinary meaning' and awarded £8000 because it lowered the defendant respect. According to Lord Atkin[889], "the statement must tend to lower the claimant in the estimation of right-thinking members of society generally, and in particular cause him to be regarded with feelings of hatred, contempt, ridicule, fear and disesteem".

5.5.1.1.: Mere abuse:

Using abusive language may not 'always' constitute a claim for defamation. Under the 2013 Act, it is not a defence to claim that the literal meaning of the statement is 'true'. The defendant cannot rely on that it was a mere abusive phrase or the publication 'actually' does not defame claimant because it depends on conclusions drawn by a 'reasonable man' from that statement[890] (see-2.17.2). However, vulgar abuse does not amount to defamation[891] as established by Mansfield CJ[892] that "For mere general abuse spoken no action lies". Concerning social media, the Queens bench[893] changed the

[885] *Capital & Counties Bank v Henty & Son* [1882] 7 App Case, at 744-745; the test is whether under the circumstances in which the writing was published, reasonable men, to whom the publication was made, would be likely to understand it in a libellous sense.
[886] *Slim v Daily Telegraph* [1968] 2 Q.B. 157.
[887] *Thornton v Telegraph Media Group Ltd* [2011] 1 WLR 1985.
[888] *Liberace v Daily Mirror Newspapers* [1959] unreported; Liberace sued the Daily Mirror, which published an article strongly hinting that he was a homosexual (at the time homosexuality was illegal in the UK).
[889] *Sim v Stretch* [1936] 2 All ER 1237; words are only defamatory if they lower the claimant in the eyes of right-thinking members of society.
[890] *Lewis v Daily Telegraph* [1964] A.C. 234.
[891] *Parkins v Scott* [1862] 1 H & C; as per Pollock CB at 158, 159.
[892] *Thorley v Kerry* [1812] 4 Taunt 355 at 365.
[893] *Jack Monroe v Katie Hopkins* [2017] EWHC 433 (QB).

traditional concept by deciding that it is not a valid argument that attention-grabbing provocative tweets are just 'mere abuse'. Social media casual communication can be held to the same standard as a 'reputable' or 'serious' publication. Now, friendly exchanged remarks and playful statements may also be taken seriously.

Similarly, words, which are prima facie defamatory, are not actionable if it is clear that they were merely general vituperation[894]. A similar rule applies to words spoken in jest[895]. Besides, it will be interesting to apply such rules to 'social media videos', because it depends on how the listeners understood these words. Similarly, the use of 'Emoji' may deter these general principles because evidence in the form of emoji can play an influential role. The malicious intent will play a significant role in deciding social media defamation cases because the presence of emoji may not always point to a more comic or sarcastic tone[896]. 'Emoji' provide context by standing in for facial expressions i.e. they add emotion by replacing entire words. Sometimes they are critical to fully understanding a text phrase or online conversation i.e. they can have significant evidentiary value in deciding defamation cases[897]. Courts have started to realise the importance of 'emoji' and its contextual values in recent cases[898].

5.5.1.2.: Innuendo:

Innuendo is the meaning given to defamatory words, in circumstances where the facts are known to potential readers[899]. For instance, it is common knowledge that the Queen is the head of state. If somebody leaves libellous remarks against the monarch, it will be innuendo and defamatory against the Queen. For a successful defamatory claim, the claimant must satisfy that the statement is defamatory in its natural and ordinary meaning[900]. Innuendo was defined by Greer LJ[901], " if there is extrinsic evidence, the

[894] McNamara, L., (2007), 'Reputation and Defamation', (OUP, Oxford University), pp 254.
[895] *Donoghue v Hayes* [1831] Hayes 265; it is not automatically slanderous to call a person a witch, a papist or divorced. However, calling someone 'son of a bitch' is non-actionable if it is taken as a compliment!
[896] *Ghanam v Does* [2014] 845 N.W. 2d 128; the use of exclamation points in electronic communication is rampant and gives a literal meaning to the quotation attributed to. The exclamation point is like laughing at your own joke.
[897] Browning, J. G., & Seale, G., (2017), 'More than words - the evidentiary value of emoji', Computer and Internet Lawyer, Vol 34, Issue 1, pp 14-20.
[898] *Piping Rock Partners v David Lerner Associates* [2012] WL 5471143.
[899] *McAlpine v Bercow* [2013] EWHC 1342 (QB) [49]-[55].
[900] *Fullam v Newcastle Chronicle & Journal* [1977] 1 WLR 651.
[901] *Tolley v J S Fry and Sons* [1931] AC 333.

words will bear to the reader defamatory in its meaning, if such evidence does not exist, the words would not be defamatory in their ordinary and natural meaning"[902]. For instance, Warby J[903] established that second Tweet was based on innuendo because Twiter users who read the second tweet could only understand it if they also follow the first Tweet. Therefore, without first Tweet, there may not be a defamation claim.

Along with the innuendo, there is also an issue of 'the context' in which communication is published. The courts seem to have different opinions for 'context' and 'innuendo[904]'. In the *Dabrowski*[905] case, wife was held liable for her Facebook post (court disregarded the context of the statement (see-7.17)).

Social media comments may not be defamatory prima facia because they may contain an innuendo that may be defamatory in meaning. However, it will depend on the facts of the case and evidence. This chapter insists that a user must be liable for the reasonable inferences to be drawn from the words he used, whether he foresaw them or not (see-7.15). Besides, it may be easier for other users to recognise claimant if they have prior knowledge. Lord Devlin[906] noted that "a derogatory implication…might not be detected at all, except by a person who was already in possession of some specific information". Sharp J[907] held that both publications must be considered as 'one publication' to identify defamatory meanings. Similarly, Lord Bridge[908] noted that determination of meaning must always take into account the whole of the statement that contains the particular 'defamatory words' i.e. the context in which the words are published. It would be interesting to determine meanings of 'emoji' because most of the followers who comment on a tweet 'sometimes' are not aware of the context of the full statement.

[902] Defamation - Case Law (2007), http://mavrkydefamationcaselaw.blogspot.co.uk/2007/01/tolley-v-j-s-fry.html [Assessed 28th July 2017].
[903] *Jack Monroe v Katie Hopkins* [2017] EWHC 433 (QB).
[904] *Baturina v Times Newspapers Ltd* [2011] 1 WLR 1526; the Judge must decide if the words are reasonably capable of two meanings.
[905] *Dabrowski v Greeuw* [2014] WADC 175; Freeguard v Martlet Homes Ltd [2008] EWCA Civ 1577
[906] *Cassidy v Daily Mirror Newspapers* [1929] 2 KB 331 on 706; the extended meaning through the extrinsic facts known to the people to whom the statement is published. Scruton LJ stated that the words which would not otherwise have been defamatory can become so because of circumstances.
[907] *Dee v Telegraph Media Group Ltd* [2010] EWHC 924 (QB).
[908] *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65; the judge must consider the entire context in which the statement was made.

The context mostly includes the facts, which were general knowledge at the time the statement was published. The reasonable reader would use these facts to determine defamatory meanings[909]. As detailed above, this is also applicable for using 'emoji', because hidden meaning is the one that may have different interpretations. However, prior general knowledge may be important as compared to social media knowledge. For instance, general election of 2010 resulted in a coalition government (an ordinary person may have some prior knowledge about elections) it is a well-settled fact. On the other hand, a tweet against Theresa May's Brexit issue may have different meanings if it is just circulating via social media (because it is not a concluded fact).

The users who knew the claimant may understand the hidden meaning of 'words' themselves[910]. Similarly, social media users who usually share or retweet others post must be aware that they are just as responsible for their defamatory content as the primary publisher is. The only (partial) defence in such situations is 'context' because the way social sites work means that any publication can appear in different contexts to different users. Warby J[911] highlighted that 'context' for which a defendant is not responsible cannot be held against him on the meaning. However, if the statement causes damage to reputation and bears defamatory meanings then the 'context' becomes irrelevant[912].

5.5.2.: The statement must refer to the claimant:

The defamatory statement must refer to petitioner i.e. an individual, organisation or legal entity. If it does not relate to the claimant (directly or indirectly), there will be no case of defamation[913]. There is no requirement to refer to the claimant by name as long as a reasonable man, who knows the claimant, would identify the claimant was referred[914]. It also applies to the use of 'cartoons, sketches, fictitious characters and

[909] *Jones v Skelton* [1963] UKPC 29; a reasonable reader does not need special guidance but only his general knowledge; he is not fettered by any strict legal rules of construction but draw meaning from the words.
[910] *Lewis v Daily Telegraph* [1964] AC 234; court will consider the true meaning of the words and presume the alleged statements are false until proven otherwise by the defendant.
[911] *Monroe v Hopkins* [2017] EWHC 433 (QB) at [39].
[912] *Wilson v Bauer Media Pty Ltd* [2017] VSC 521; as per John Dixon J.
[913] If ordinary readers familiar with the person understand the article to be referring to him or her, that will be enough to prove defamation.
[914] *J'Anson v Stuart* [1787] 1 Term Rep 148; judge established that if the claimant is not named then the description must be so detailed that a reasonable person would assume the article was about the claimant.

emoji' in a defamatory publication, if a reasonable man can identify the claimant[915]. Importantly, the intent to harm may be a vital element because social media users mostly do not know other users i.e. they may not intend to harm other users by their words. Lord Kenyon[916] established that defamation could only be constituted if there is malicious intent to defame. However, regardless of intention, it may be difficult to prove serious harm of emoji via social media[917]. (Serious harm threshold of Section-1 may be a bar to this rule).

The accidental or mistakenly shared statement will not offer a statutory defence as long as harm can be proved. For instance, A statement by Donal Trump against Sadiq Khan will be considered defamatory even though he may not intend to humiliate the Mayor of London. He may be referring to another Sadiq Khan. If the Mayor of London suffered any harm, it would be sufficient to constitute a libel claim. (Presidential immunity is beyond the scope of this thesis). Scrutton LJ[918] stated that if the words published humiliate a claimant, it does not matter if defendant meant to refer it to the claimant (see-5.5.1.2). Similarly, if it is proved that the words are defamatory and a reasonable man can easily identify claimant, then intention will be irrelevant (see-7.19). It also applies to social media users who claim that they do not know claimant. So, a defendant cannot use an excuse that his publication was not intended for claimant. As was stated by Loreburn LC[919] intention is no defence 'however excellent it may be'.

Concerning social media, it is important that other recipients must understand that defendant's comments relate to the claimant. If other users (even wrongly/mistakenly) assume/think/understand/believe/identify that defendant's defamatory comments refer to the claimant, it will suffice for libel cause of action. In social media, users may have nicknames or use various other names, so it is not necessary that the communication relates to the claimant by the original name[920]. As long as, a reasonable man

[915] *E Hulton Co v Jones* [1910] AC 20 HL.
[916] *Rex v Lord Abingdon* [1794] 170 ER 337.
[917] Pelletier, N., (2016), 'The emoji that cost $20,000: Triggering liability for defamation on social media, Washington University Journal of Law & Policy, Vol 52, pp 227.
[918] Withers v General Theatre Corporation Ltd [1933] 2 KB 536; the claimant would not had loss of reputation if the defendant had not committed the breach of contract.
[919] *E. Hulton & Co V Jones* [1910] AC 20 HL.
[920] *Newstead v London Express Newspaper* [1940] 1 KB 377 CA; Because defamatory material may be in the form of a comment, remark, statement or even factious characters. In social media it can also be an 'emoji'.

understands it refers to the claimant, it is sufficient[921]. For instance, in an online group, sharing a black emoji may be considered referring to the Afro-American user. However, it depends on how many other users belong to the same class in that group because a 'class' cannot be defamed.

5.5.2.1.: Defamation of a class:

The case of *Alme*[922] established the general rule that 'a class or group of humanity' could not be defamed. This rule will also apply to social media that individual users of a group, which has been defamed, have no cause of action. For instance, if a person tweets, dentists in Yorkshire exploit their patients – no particular dentist is identified. However, if a member of the group can be identified as an individual, in that class he will have a valid cause of action for defamation[923]. For example, if the tweet is about the Asian dentists in Bradford University area – 'an Asian dentist' is identifiable because there are only three dentists in BD7. Willes J[924] found that "if something is there to point to a particular individual" in that class.

Similarly, if there is a very specific allegation against an entire group, each group member might be able to claim[925]. If defendant referred to a small group of people, they all could bring an action as in the *Browne*[926] case, court allowed a defamation case of all tenants because the class was referred to a particular building. The HL[927] later reinforced that limited group of people can be defamed; however, size of the group was not identified by their Lordships. Therefore, if a professor tweets that "one student" in my class is a drug addict and the class has five students, they all can argue that the allegation reflected on them. If there are fifty students in the class, they cannot.

[921] *Morgan v Oldhams Press* [1971] 2 All ER 1156 (HL).
[922] *King v Alme and Nott* [1700] 91 Eng. Rep. 790; it was reaffirmed on several occasions as in Knupffer v London Express Newspaper the judge generalised that a member of a group cannot sue because his group or class has been defamed. However, as held in the Foxcroft v Lacey, a member of a class can sue for defamation of group if group is small enough to reflect upon each member.
[923] Marcus, E. T., (1983), 'Group Defamation and Individual Actions: A New Look at an Old Rule', 71 Cal. L. Rev., Vol 71, Issue 5, pp 1532-1556.
[924] *Eastwood v Holmes* [1858] 1 F&F 347 at 349.
[925] *Knuppfer v London Express Newspaper Ltd* [1944] AC 116.
[926] *Browne v DC Thomson* [1912] SC 359.
[927] *Knupffer v London Express Newspaper Ltd* [1944] AC 116.

5.5.2.1.1: Common law position:

The Common law does not define 'number of people' in a group, but in various cases, claimants had recovered damages when a group included 25[928] or fewer people. Despite its limitations, if the language is more inclusive, the range of people who can sue expands. For instance, 'Asian MPs' are corrupt - this accusation may be taken as reflecting on each Minister who is Asian. In social media claims, 'representation' of the defamatory statement will have greater significance in deciding such cases[929]. For instance, if Donald Trump has 25 followers on Twitter then tweeting: 'most followers' are corrupt will be considered defamatory as compared to tweeting 'one follower' is corrupt. This particular 'one follower' cannot be identified out of 25, whereas 'most followers in a group of 25' are identified.

Concisely, class or social media group of users cannot be defamed unless:

1. Communication-related to a group, which is so small, that other user can reasonably understand that it refers to the claimant?
2. Such publication is shared, which led other users to reasonably conclude that the publication is intended for the claimant

5.5.2.1.2.: Modern position:

In the 2013 Act, there is no cause of action available for a member of a class of humankind unless that member can be specifically identifiable. This thesis argues that with social media where there are groups and many followers of one person, this traditional rule lacks the means to vindicate a user's good name[930] i.e. this rule is unfair and illogical in cyberspace. This analysis suggests that there is a need to differentiate between social media groups and 'group/class' for defamation. The rule 'a group or a class cannot be defamed' should only be applied to traditional defamation. Social media 'groups' are a common place for networking and collect quick information. In such groups, individual users can have different nationalities, religious beliefs, colour, race or

[928] In general, for groups bigger than 25, it may be difficult for courts to find that an accusation against one person reflects on all.
[929] *Neiman-Marcus v Lait* [1952] 13 F.R.D. 311 (S.D.N.Y).
[930] Marcus, E. T., (1983), 'Group Defamation and Individual Actions: A New Look at an Old Rule', 71 Cal. L. Rev., Vol 71, Issue 5, pp 1532-1556.

ethnicity. Hence, social media group users should also be allowed to proceed by general standards of defamation.

5.5.2.2.: Unintentional defamation:

Libel is a tortious act[931] so the defendant cannot argue that he did not intend to defame the claimant. Mostly social media users do not know other users; however, they still communicate/publish/reply others comment. Regarding defamation, they may argue they do not know if a certain user existed or they intend to defame a particular user. As a political activist, Monroe won a Twitter defamation claim against Katie. Even though Katie had no intention to defame (she even deleted initial tweets). Warby J[932] had no difficulty in identifying that the actual meaning of her statement bore defamatory meaning. He noted, "Due allowance should be made for a forum which has less credibility than 'serious' media publications". Lord Kenyon[933] noted that defamation could only be constituted if there was a malicious intent to defame[934]. However, it is only applied where the defamatory statement was based on truth, honest opinion or the matter concerning public interest[935].

Lord Loreburn[936] concluded that the intention of the defendant is immaterial if 'libel' is communicated. It depends on the nature of the injury and the harm suffered so the intention does not matter if the claimant's reputation has been harmed. Similarly, the intention will be irrelevant (even if the defendant acted in bad faith and wanted to defame) where a reasonable man could not identify that defamation was referred to the claimant[937]. Similarly, Donald Trumps Tweet against Sadiq Khan will not constitute a libel if people are unable to link it to the Mayor of London. In social media, a reasonable man could be representative of users who follow the defendant[938].

[931] Barendt, E., (2017), 'Defamation Law', Journal of Media Law, Vol 9, Issue 2, pp 291-295.
[932] *Jack Monroe v Katie Hopkins* [2017] EWHC 433 (QB).
[933] *Rex v Lord Abingdon* [1794] 170 ER 337.
[934] *Wilson v Bauer Media Pty Ltd* [2017] VSC 521; malicious intent was proved from repetition of defamatory articles.
[935] Defamation Act 2013; http://www.legislation.gov.uk/ukpga/2013/26/crossheading/defences/enacted [Assessed 29th July 2017].
[936] *E Hulton & Co V Jones* [1908] All ER Rep 29.
[937] In defamation, literal truth of the words have no relevance because it depends upon 'what meanings ordinary readers' take from this publication.
[938] *Jack Monroe v Katie Hopkins* [2017] EWHC 433 (QB).

In common law, the intention has been irrelevant; however, Section 4 of 1952 and Sectio2 of 1996 Acts provided a special defence of 'unintentional defamation'. It depends on 'offer of amends'. If it is proved that defendant acted maliciously, this defence may not be available; nevertheless, it may be difficult to prove recklessness of social media users. (It is beyond the scope of this thesis).

5.5.3.: Defendant must publish the statement:

The statement must be communicated to a person other than the claimant. If it is not communicated or published than there will be no cause of action[939] because the claimant is not defamed in the eyes of right-thinking members of society[940]. However, different rules apply to domestic, business or social communications.

5.5.3.1.: Communication between husband and wife:

There have been attempts to protect communication between spouses. The idea was that the consequences of this 'publication' might lead to disastrous results in social life[941]. However, with the excessive reliance on social media, it is impossible to protect the publication of spousal communication. However, the court has taken a strict stance on character assassination and revenge porn etc.

5.5.3.2.: Communication during employment:

In common law, there have been many attempts to protect business interests[942]. In today's digital arena, multinational companies carry their business transactions via social networking. If an employee is alleged of potential defamation, the employer may be held to be vicariously liable because defamation is a tort of strict liability (see-5.5). There is a general rule, 'communications during the normal course of employment is protected by qualified privilege'[943]. There is no provision in the 2013 Act to rebut this

[939] *Ryanair Ltd v Fleming* [2016] IECA 265; without the evidence of publication, jurisdiction for online defamation cannot be assumed.
[940] Barendt, E., (2017), 'Defamation Law', Journal of Media Law, Vol 9, Issue 2, pp 291-295
[941] *Wennhak v Morgan* [1888] 20 QBD 635 at 639.
[942] *Salmond & Heuston* (1996), 'The Law of Torts', (21st Ed, Sweat & Maxwell), pp 154.
[943] *Bryanston Finance v De Vries* [1975] QB 703.

general presumption, so it applies to business and all other good faith relations[944] (doctor-patient, lawyer-client, and bank-customer).

5.5.3.3.: Distributors:

The common law protected booksellers and distributors of materials from defamation as internet service providers are not held to be the publisher[945]. Similar provisions are found in Section-5 of 2013 Act regarding website operators, ISPs and network providers. However, it does not apply to distribution on the chat room, communications via dialogue boxes and comments left on review websites.

5.5.3.4.: Consent:

About social media users, due 'consent' is presumed when they accept the terms and conditions of social networks. It may be reasonable for advertisements or promotional videos. Nobody gives consent to defamatory 'words' at the time of sign up. Nevertheless, there are different privacy and user control settings available and by not opting to use these settings, valid consent can be assumed.

5.5.4.: Serious harm:

"A statement is not defamatory unless its publication has caused or is likely to result in damaging petitioner's reputation[946]".

Serious harm or the 'threshold of seriousness' requires claimants to prove the degree of harm suffered or potential future serious injury to reputation[947]. For years, London has been renowned for 'libel tourism' (see-2.17). Justice Tugendhat[948] introduced 'substantial harm' and recommended a threshold which could consistently interpret Article 10[949]. In England, there was a need to maintain a balance between 'freedom of expression' and defamation. Section 1 is a step forward to boost the freedom of speech

[944] It is beyond the scope of this thesis.
[945] Section 1 of the Defamation Act 1996.
[946] Section 1(1) of the Defamation Act 2013.
[947] Section 1 (1), The Defamation Act 2013.
[948] *Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414 (QB).
[949] Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

and discourage trivial claims, which will also save court time and public funds[950]. In the 1996 Act, harm was presumed in libel cases; however, section-1 will make claims for a Facebook insult or Twitter abuse very difficult unless claimant suffers a grave danger to reputation. Bean J[951] simplified the concept of 'serious harm' that it cannot be presumed and must be proved. It is interesting to note that social media claimants do not have to adduce evidence of serious harm as long as statistics are available to demonstrate some users had access to the defamatory material (see-2.13.1).

However, the degree of social media reputational harm must be severe within a reasonable social circuit. Moloney QC[952] clarified that if the claimant has serious, defamatory allegations and publication to a relatively substantial audience, there is a non-rebuttable case of serious harm. On the contrary, Dingemans J[953] established that the issue of serious harm is not a 'numbers game'. Further guidance regarding serious harm was provided by Warby J[954] that, on balance of probability, it is necessary to prove, serious harm to reputation is caused, or likely to cause because of the publication".

This thesis will not explore if social media has the capacity to alter the course of defamation law in England and Wales legal framework. However, it will discuss the existing provisions which are still applied in online defamation claims. Here it is important to discuss typical structural changes brought by the Defamation Act 2013 to identify if it applies to social media defamation as well.

5.6.: Common structure and features of defamation:

"A reputation once broken may be repaired, but the world will always keep their eyes on the spot where the crack was - Hunt[955]".

Unlike traditional media (television, radio etc.), social networking sites are not limited to one-way communication because it provides instantaneous two-way communication. This facility may create parity between the parties, possibly creating opportunities for

[950] Barendt, E., (2017), 'Defamation Law', Journal of Media Law, Vol 9, Issue 2, pp 291-295.
[951] *Cooke and Midland Heart Ltd v MGN* [2014] EMLR 31 at [43].
[952] *Theedom v Nourish Training Ltd* [2016] EMLR 10 at [15].
[953] *Alvaro Sobrinho v Impresa Publishing SA* [2016] EWHC 66 (QB).
[954] *Lachaux v Independent Print Limited & Ors* [2015] EWHC 2242 (QB).
[955] Hunt, P. H., (2013), 'Tortious Tweets: A Practical Guide to Applying Traditional Defamation Law to Twibel Claims', Louisiana Law Review, Vol 73, Issue 2, pp 8.

mitigation by the defamed party[956]. Social media allows a victim (whose reputation has been defamed) to rebut the defamatory comments online and the claimant will still be entitled to a defamation claim[957].

Hyperbole, opinion, comments and sensational language are common features of social media which changed things by making it much easier and faster to spread word around (see-2.10.1). There was no such mechanism for teens to make up stories via traditional media which could be viewed by millions[958]. Nothing has deterred the authorities from applying traditional laws in online defamation cases. It has been noted that defamatory words on social media websites tend to be problematic for judges to identify because cyberspace blurs the line between traditional media outlets and social media websites[959].

There are various legal instruments available to apply to both online and offline defamation. Despite these various rules, judges have struggled with determining a standard to identify which statement amounts to defamation (see-2.10.1). In the era of social networking, it may even become difficult because a statement may be viewed as defamatory but the same statement may not be defamatory for others. Therefore, judges require claimants to show that his reputation has been harmed in the eyes of a defined group. Previously this question was decided by jury; however, the 2013 Act has abolished trials by jury. Nevertheless, this Act did not fundamentally change the law relating to defamation (see-2.13). The basic principals about the nature of defamation and its types are same. Even legal rules of the 1996 Act, which defined (1) natural meaning of libel, (2) when they lower claimant's reputation in the eyes of ordinary persons; are still applicable to social media as well.

This chapter will only analyse the aspects of social media libel (printed words, cartoons, images or sketch) with an emphasis on user-generated content (UGC). It is material generated by social media users via a Facebook status, tweets, comments, blogs, articles or opinions. UGC may include, online status, comments, tweets, journals, articles, blogs, wikis, exchange communication, chats, discussions, reviews, posts, podcasts and

[956] Placid, R., Wynekoop, J., & Feicht, R. W., (2016), 'Twibel: The intersection of twitter and libel', Florida Bar Journal, Vol 90, Issue 8, pp 32-45.
[957] David, L., & Zach, S., (2011), 'Public Figure-hood in the Digital Age', Journal on Telecomm & High Tech., Vol 9, Issue 2, pp 403.
[958] Seidenberg, S., (2017), 'lies and libel', ABA Journal, Vol 103, Issue 7, pp 48.
[959] Placid, R., Wynekoop, J., & Feicht, R. W., (2016), 'Twibel: The intersection of twitter and libel', Florida Bar Journal, Vol 90, Issue 8, pp 32-45.

modified pictures[960]. Importantly, advertisements, video recordings, audio recordings and different types of media that were made by clients of an online framework or administration are also UGC which are regularly made accessible via web-based social networking site[961].

5.7.: Eligibility to bring an action for libel:

The Common law allows a natural (dead people cannot sue[962]) and legal person, including organisations and companies to bring an action for libel if their reputation has been injured online. The threshold of serious harm must be satisfied (see-7.16); however, a corporation, which trades for profit, has to prove that libellous words have caused or will cause 'serious financial loss[963]'.

The eligibility criterion is divided into below groups:

1. Individuals: A person or class of individuals, legal entity, trades union, patients and minors are entitled to bring an action.
2. Local bodies: A public institutes, political bodies, governing bodies[964], local authorities[965], and unincorporated associations are not eligible to bring libel claims[966].
3. Officials: Lord Keith[967] noted that to admit libel action from government bodies will be contrary to the public interest because it may leave an undesirable fetter on freedom of speech[968].
4. Political parties: They cannot file a libel claim[969]; however, politicians and government employees can file a claim[970].

[960] Erevik, E. K., Pallesen, S., Andreassen, C. S., & Torsheim, T., (2018), 'Who is watching user-generated alcohol posts on social media?', Addictive behaviours, Vol 78, pp 131-137.
[961] Schivinski, B., & Dabrowski, D., (2016), 'The effect of social media communication on consumer perceptions of brands, Journal of Marketing Communications, Vol 22, Issue2, pp 189-214.
[962] *R v Topham* [1791] 100 Eng. Rep. 931; 4 T.R. 126.
[963] The Defamation Act 2013; s.1(2).
[964] Montague v Page [2006] OJ No 331; under common law governments are not allowed to bring defamation claims against citizens.
[965] Manchester Corporation v Williams [1891] 1 QB 94; a local council could not succeed because corporations may only sue for libels affecting property not for personal reputation.
[966] Young, H., (2016), 'Public institutions as defamation plaintiffs', Dalhousie Law Journal, Vol 39, Issue 1, pp 249.
[967] *Derbyshire County Council v Times Newspapers* [1993] AC 534.
[968] Law Report: Local authorities cannot institute libel actions; http://www.independent.co.uk/news/uk/law-report-local-authorities-cannot-institute-libel-actions-derbyshire-county-council-v-times-1473954.html [Assessed 2nd July 2017].

It is necessary to distinguish that the universities are not local body and they can file libel claims[971]. They may be strictly liable for defamation caused by their students while using social media via university internet[972]. Libel is a tort of strict liability[973], which remains the same for social media. Libel cause of action can only be analysed after understanding nature of social media.

[969] *Goldsmith v Bhoyrul* [1998] Q.B. 459.
[970] *Yeo v Times Newspapers Ltd* [2014] EWHC 2853 (QB).
[971] *University of Salford v Duke* [2013] EWHC 196 (QB)
[972] Keeton, W. P., (1984), 'Prosser & Keeton on the law of Torts' (5th Ed, NSW), pp 803
[973] *Morgan v Odhams Press Ltd* [1971] 2 All ER 1156

Chapter 5

Part B

Libel in social media

5.8.: What is social media?

"Social media users cannot be subject to arbitrary interference with their privacy…. Everyone has the right to the protection of the law against such interference of attacks[974]".

Internet-based applications, apps or websites, which are used for social networking, social curation and microblogging, are all categories of social media (see Appendix – VII). It is a collection of all communication channels, which allow interaction, sharing, collaboration and community base input[975]. It may be defined as: "A group of web pages, developed from the technological foundation of 'WWW', which facilitates exchange and creation of user-generated contents[976]". Social media user can consume, organise, create and distribute UGC within a second[977].

In many instances, social media contents can quickly be forgotten, the flow of consciousness, or sometimes even go unnoticed. Equally, postings can be downloaded, copied, 'liked', 'retweeted' and 'shared' which can instantly go viral[978]. If a defamatory content against another user goes viral, it can do significant damage. It can destroy reputations quickly within a group[979]. It's commonly renowned characteristics are: Easily accessible, interactive nature, participatory culture, two-way communications, permanent and importantly, the creator relinquishes control of the contents[980]. On the other hand, its use has changed from just being a social network. It has become a remote

[974] Art 1, 3 & 7, The Charter of Fundamental Rights of the European Union; Art 8, European Convention on Human Rights 1950.

[975] Gupta, S.S., Thakral, A., Choudhury, T., (2018), 'Social Media Security Analysis of Threats and Security Measures', International Conference on Communications, No 12, Comm 8430168.

[976] Kaplan, A. M., & Haenlein, M., (2010), 'Users of the world, unite! The challenges and opportunities of social media' Business Horizons, Vol 50, Issue 1, pp 61.

[977] Thomas F. B., (2012), 'Social media: The end of civilisation?', The Warrane Lecture, University of New South Wales, Sydney, pp 7.

[978] Seidenberg, S., (2017), 'lies and libel', ABA Journal, Vol 103, Issue 7, pp 48; social media allows individuals to be hurt in ways that simply did not previously exist.

[979] Gallardo, K., (2017), 'Taming the internet pitchfork mob: Online public shaming, the viral media age, and the communications decency act', Vanderbilt Journal of Entertainment Technology Law Vol 19, issue 3, pp 721-746.

[980] Online content can last indefinitely because some forums store and index posts from the day the forum went up, even preserving libelous postings, as long as the forum lasts. This permanence of shared content carries a past injury forward, potentially forever, making an original sin into an eternal one; Paul, J. L., (2014), 'Revenge Porn, State Law, and Free Speech', Loy. L.A. Law Review, Vol 48, pp 57- 62.

supermarket, information centre, advertisement agency and news-agent because updated newsworthy information streams across it regularly[981]. For instance, officials, academics, governments, journalists and corporations now also use Facebook and Twitter. It is a source of real-time information, including politics, celebrity gossip, sports discussions, natural disasters and debates over sexual violence[982].

5.8.1.: The nature of social media communication:

"How can one court assume jurisdiction while other declines jurisdiction or why two courts assume parallel jurisdiction for one online activity[983]".

Social media provides a platform for users to build their social relationships. For instance, anybody can follow Bill Gates via Twitter. In this era of smartphones, social networks are even larger than before because they provide more ways of communication (see-2.1). The smart technology has also radically changed whom you communicate with and how you communicate because every social media has a different level of communication with different purpose and etiquette. For instance, LinkedIn may only be used for professional networking, Skype for wide calling, WhatsApp for message sending, Facebook for a status update and Twitter for following celebrities etc.

The networking forums resemble with other mediums, including the postal service, radio, television, telephone, library or newspapers[984], however, modern technology has additional attributes:

1. Social media networks are web-based and do not recognise geographical boundaries
2. They use hyperlinks which blur the distinction between where one publication ends and the next begins
3. User-generated content is an important feature of social networks[985]

[981] Michael Wigney *in the Geoffrey Roy Rush v Anor* [2017] NSD2179 awarded damages to Geoffrey because the alleged defamatory publication he has been constantly associated in Australia and internationally with the #MeToo movement.
[982] Placid, R., Wynekoop, J., & Roger W. F., (2016), 'Twibel: The Intersection of Twitter and Libel', The Florida Bar Journal, Vol 90, Issue 8, pp 32.
[983] Rosenblatt, B., (1999), Conflicts of Law, available online at https://cyber.harvard.edu/property00/jurisdiction/conflicts.html [Accessed 17th January 2017].
[984] Obar, J.A., & Wildman, S.S., (2015), 'Social media definition and the governance challenge: An introduction to the special issue', Telecommunications policy, Vol 39, Issue 9, pp 745–750.

4. Users are allowed to create their profiles
5. They facilitate users to connect their profile with an individual or existing groups[986]
6. Any publication can be republished/re-shared to the geographically diverse audience
7. Re-sharing is easy/accurate than publication through traditional means

The social media application domain is ever increasing because various government agencies, health departments, educational institutes, dating services, financial traders, banks and social services, medical professionals and even political movements are linked to social media. However, regardless of professional status, while using social media, everyone can be a publisher. The level of liability can be different depending on vicarious liability, third party liabilities, ISPs liability, defamation materialised during paid work and cases against the content providers (see-5.7). It can be evaluted by understanding the nature of online libel.

5.8.2.: Nature of social media Libel:

Post - 20th century, social media furthered changes in cultural society and everyday life by the interactions of comments or liking pictures and sharing ideas (see-2.2). Its use escalated during the 21st century when various social media channels (Facebook, Twitter, Google +) and online commentary sites (TripAdvisor, Yelp and review sites[987]) facilitated users to share information. It could be available for other users to read and leave their comments. Many social media websites are designed with the idea to encourage end-users to share information instantly. However, there is no mechanism to regulate the content of shared information i.e. sharing via social media may occur without any oversight of the truth of the contents. Even content regulatory bodies do not screen for potentially libellous comments. Content shared via social media can also be archived in databases forever (See-2.3.2). The legal implication regarding social media communication is global because damage can be done wherever content is published because it is permanent; it can reach a huge audience; it is quick to influence and its

[985] Thelwall, M.A., (2014), 'Social network sites: Users and uses', Advances in Computers, Vol 76, Issue 4, pp 19-73.
[986] Andreas, M., & Michael, H., (2010), 'Users of the world, unite!: The challenges and opportunities of social media', Business Horizons, Vol 53, Issue 1, pp 61.
[987] A doctor sued her patient after she posted negative comments via Yelp and Facebook; BBC news (2018) http://www.bbc.co.uk/news/world-us-canada-44308890 [Assessed 2nd June 2018].

sharing is easy and expeditious (see-5.8). Furthermore, anonymity allows users to post their imaginations instantaneously because users assume an entirely different personality than they show in the real world (see-2.10.4).

In recent years, there has been a tremendous increase in the risk of libellous material to reach a broader audience. This expansion is mostly due to rising of social networks and easy access to content aggregation sites, user-friendly apps and online commentary. These social networking sites stimulate sharing of contents without fact-checking and giving due regard to regulations[988]. For instance, a modified photo posted on Reddit may attract a million viewers; many users may 'like' a Facebook post against official bodies; users may comment on the anti-social status and similarly followers 'retweet' without due regards to its context (see-7.17). It is relatively easy to share fake news[989] or false information about another user or a corporate body[990].

On the other hand, it will be wrong to assume that social media is unregulated. Every website has its anti-social behaviour policies and the shared contents are moderated for inappropriate, indecent exposure or pornographic elements[991]. However, social media is unregulated for fake news or defamatory contents[992] so consumers, uploaders and potential victims are responsible for understanding the landscape of social media libel.

5.8.3.: Freedom of speech in social media:

> "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers[993]".

[988] Bingireki, E., (2016), 'Defamation in Tanzania'; Available online at https://www.linkedin.com/pulse/defamation-social-media-cyber-legal-perspective-benedict-ishabakaki [Assessed 2nd August 2017].

[989] Allcott, H., & Gentzkow, M., (2017), 'Social media and fake news in the 2016 election', Journal of Economic Perspectives, Vol 31, Issue 2, pp 211-236.

[990] Online commentators may be rewarded with attention and public support when they blast other individuals.

[991] Balkin, J. M., (2018), 'Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation', Yale Law School, Public Law Research Paper No. 615.

[992] Rajan, A., (2018), 'Martin Lewis seeks damages for 'fake' Facebook ads'; https://www.bbc.co.uk/news/entertainment-arts-43857921?intlink_from_url=https://www.bbc.co.uk/news/topics/cxwke9d43kkt/defamation-cases&link_location=live-reporting-correspondent [Assessed 4th June 2018]; this case is listed for hearing but it will clarify the situation with regards to S9 Jurisdiction and whether Facebook is a primary publisher.

[993] Article 19; Universal Declaration of Human Rights, UNGA, 1948.

Cyberspace communication enables freedom to express views and comments using social media tools. It is easy to post a status being a 'gay' as compared to speaking. Individuals can choose a favourite name on their profile; LGBTQ people are more welcomed in social groups, even when they are fighting for their rights. Similarly, harassment, bullying, stalking, trolling, fake news and character assassination are also associated with social media sites. The so-called protectors of 'freedom of speech' and 'social media savvy' usually oppose defamation cases[994]. However, it is no laughing matter when it can cost someone to lose his job or possibly his life. For instance, Mashal Khan[995] was killed (wrongly) over the blasphemous Facebook status and Sunil Tripathi's[996] family was threatened because somebody falsely accused him on Reddit of being the Boston Bomber. There are several examples where the victims suffered because some social media user has the right to share certain information (see Appendix-3).

It is arguable, whether speculations, spreading rumours and intentionally degrading statements can be categorised as freedom of expression[997]. Particularly, England is a country with diverse communities, where misapprehensions can easily create tensions between different ethnic groups. For instance, the web page of a sketch of the last Prophet Hazrat Muhammad (ﷺ)[998], sparked outrage among the Muslim groups[999].

This chapter recommends that social media organisers and ISPs should work together to stop certain information from broadcasting. The question remains: Who will monitor personal information (if this is the case, security agencies are within their rights to spy

[994] Ash, A., (2017), 'How the rise of liberal, social media-savvy generation is challenging Chinese Society': Available online at http://www.vox.com/world/2017/3/26/15035702/china-social-media-youth-society-culture-politics-government [Assessed 26th April 2017].

[995] BBC (2017), 'Pakistan student killed over 'blasphemy' on university campus'; available online https://www.bbc.co.uk/news/world-asia-39593302 [Assessed 13th July 2018].

[996] Kang, J., (2013), 'Should Reddit Be Blamed for the Spreading of a Smear?'; available online http://www.nytimes.com/2013/07/28/magazine/should-reddit-be-blamed-for-the-spreading-of-a-smear.html [Assessed 13th July 2018].

[997] Kenyon, A. T., (2014), 'Protecting speech in defamation law: Beyond Reynolds-style defences, Journal of Media Law, Vol 6, Issue 1, pp 21-46.

[998] Agence, F., (2018), 'Egypt blocks YouTube over film denigrating prophet Muhammad (ﷺ)', online https://www.theguardian.com/world/2018/may/27/egypt-blocks-youtube-over-film-denigrating-prophet-muhammad (ﷺ)[Assessed 26th August 2018].

[999] Aljazeera (2017), 'Pakistan to meet Facebook over 'blasphemy' posts', online url: http://www.aljazeera.com/news/2017/03/pakistan-meet-facebook-blasphemy-posts-170322202651621.html [assessed 21st April 2018].

online communication –it is beyond the scope of this thesis). Besides, it has to be decided that what can be considered 'libellous'.

5.8.4.: What constitutes libellous on social media?:

The elements, feature and characteristics of a defamatory statement have been established for centuries (see-5.2). It has not been updated for social media (see-5.4). However, following changes has been brought in the publication and identification of a libellous content:

1. **Who uses it:** Social media users range from teenage to old age. They all are potential publisher and broadcaster but they do not have access to editorial service. This lack of advice is a major factor in the increase of various false and defamatory allegations and invasions on social media every second[1000]. A libellous statement is more amenable to prosecution than published in traditional media, where publication is a one-off phenomenon[1001]. Information posted online remains in a continuous state of publication[1002] because social media have bigger and instance audience. The law does not presume that by placing material online can amount to substantial publication[1003]; besides, the claimant has to prove that the statement is viewed by the members of his community (see-5.5.3).

2. **How much is used:** The over-reliance on social media is giving rise to the defamatory content being published at an alarming intensity. With the rise of social networks and internet usage, there is high-risk defamatory content to reach a broad audience in seconds. These social networks are designed to encourage and incentivise the sharing of information without any fact checking or regulation. With the growing number of internet users, it, therefore, becomes easier to share false information about a person's life or business, and hence

[1000] Heslop, A., (2012), 'Ignorance Isn't a Defence Against Sub Judice, available online: http://www.abc.net.au/news/2012-09-28/heslop-twitter-contempt/4285856 [Assessed 2nd August 2017].
[1001] *Her Majesty's Advocate v William Beggs Opinion No 2 of Lord Osborne* [2002] SLT 139.
[1002] *Digital News Media Pty Ltd v Mokbel* [2010] 30 VR 348 NSWCCA 125.
[1003] Deakin, S., Johnston, A., & Markesinis, B., (2003), 'Markesinis and Deakin's Tort Law', (7th Ed, Oxford university press), pp 652-655.

possible to defame someone or the business and as a result lowering the reputation, trustworthy in the community[1004].

3. **Gravity of harm:** In canvassing the harm that victims need to prove for legal actions, it is relevant to consider whether new norms should be adopted for characterising the speech on social media. Given the democratisation of online speech, which is free, spontaneous, and open cultural expression, it is suggested to allocate less probative weight and meaning of such utterances. In pursuit of damages, the claimant submits to public scrutiny attached to the civil litigation[1005]. The human sources of communications, so critical to acceptance of traditional media accounts, are often suppressed by social media[1006].

4. **How to claim defamation:** Just like offline defamation, a claim of social media libel can only be actionable if claimant's reputation is lowered in the eyes social media community/group. The claimant must follow pre-action protocol to initiate a libel claim and present himself in open court with proof of alleged defamatory material[1007].

5.9.: Taking legal action:

The procedure of legal action is explained in two parts. The first part provides the details according to the statute, whereas the second part explains the general practice.

Part A: Theoretical strategy

Taking legal action for social media libel is a significant step. It is costly because instructing a lawyer in England is expensive[1008] (see-2.14). The starting point is to obtain an injunction to stop the libellous material from further sharing; however, it is

[1004] When online community is outraged by some event, social media users often flood Internet with hateful and false comments about the alleged perpetrator, feeling empowered by their numbers and anonymity.
[1005] *A.B. v Bragg Communications Inc* [2011] NSCA 26; As per Jamie W.S. Saunders J.
[1006] Karniel, Y., (2008), 'Defamation on the Internet: A New Approach to Libel in Cyberspace' Journal of International Media & Entertainment, Vol 2, pp 215-219.
[1007] To be able to proceed with a social media libel claim under a cloak of secrecy may be contrary to the quintessential features of defamation law.
[1008] England, C., (2017), 'Katie Hopkins ordered to pay out £131,000 after losing Jack Monroe libel case appeal', online https://www.independent.co.uk/news/uk/home-news/katie-hopkins-jack-monroe-libel-case-pay-out-131000-lose-appeal-a7658146.html [Assessed 11th June 2018].

not a simple step. To obtain an injunction, the judge must be satisfied that it is the required measure under the circumstances[1009]. The injunction is not a 'standalone' remedy because the claimant can request a full hearing trial, which may be a stressful process for the claimant[1010].

If a victim decides to take legal action, he must instruct solicitors to send a '*Cease and Desist' letter*[1011]. This letter explains how the defendant's conduct is unlawful (see-5.9.1.2). It warns him if same conduct is continued than police complaint is likely to follow[1012]. Alternatively, compensation and legal assurances that there will be no repetition can be sought. Once a claim is forwarded, the claimant must refrain from engaging in any further communications or even replying to the defendant's queries via social media[1013]. This communication can be used as evidence. The claimant must preserve evidence by taking snapshots/printing of the defamatory remarks and submit to the solicitor[1014].

5.9.1.: Legal strategy for social media libel:

Social media has become an instant means of communication, where statements are quickly forgotten or even go unnoticed. It also allows statements to be 'liked', 'copied', 'downloaded', 'shared', and 'retweeted' (see-5.1). If a defamatory statement, picture or video, ends up 'going viral' the damage done can be significant (see-5.8.3). In a networking group, reputation can quickly be destroyed so the tort of libel becomes actionable if the reputational damage is caused (see-2.10.2).

If the damage is established, the court will ignore the following:

1. Innocently or mistakenly re-sharing someone's post (see-7.15)

[1009] *(1) Michael McGrath; (2) Necon Technologies Ltd v (1) Byron Bedofrd; (2) Proeconomy Ltd* [2016] EWHC 174; a threshold of serious harm must be met.
[1010] *Hiranandani-Vandrevala v Times Newspapers Ltd* [2016] EWHC 250.
[1011] Ardia, D. S., (2013), 'Freedom of speech, defamation, and injunctions', William and Mary Law Review, Vol 55, Issue 1, pp 42.
[1012] Ambrose, M. L., (2014),' Speaking of forgetting: Analysis of possible non-EU responses to the right to be forgotten and speech exception', Telecommunications Policy, Vol 38, issue 9, pp 800-811.
[1013] *Morgan v Associated Newspapers Ltd* [2018] EWHC 1725 (QB).
[1014] Wilson, B., (2017), 'Libel, privacy breaches and harassment on Snapchat', Media Law Blog; Online Url http://www.brettwilson.co.uk/defamation-privacy-online-harassment/defamation/[Assessed 18th August 2017].

2. Published something in rage and anger and later deleted that statement (see-7.17)
3. Deliberately launching a humiliating attack (see-7.20)

5.9.1.1.: Defamation pre-action protocol:

The 'Defamation Pre Action Protocol[1015]' determines the period prior to issuing the proceedings[1016]. It[1017] is a code of practice which the parties of social media libel must follow when litigation needs to be considered[1018]. This protocol encourages the litigants to disclose information at an early stage. It will enable them to understand the case and can increase the prospect of 'out of court' resolution[1019]. Importantly, if a claimant does not follow this code, the proceedings will be rejected without a hearing trial[1020]. Once, the claim proceeds to court, the judge will consider the extent to which the protocol has been followed[1021]. CPR 1.4(l)(i) binds the court to identify the facts of the case even before trying the preliminary points of law[1022]. CPR 1.4 (2)(e) provides that the case management duties of the court are to encourage the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure. If the parties do not opt for alternative resolution, then the proceedings commence. The requirements of the Pre-Action Protocol for Defamation Claims are detailed below (see Appendix-IV).

[1015] According to Lord Irvine, it is designed to improve pre-action communication between the parties by establishing a timetable for the exchange of information and by setting standards for the content of correspondence. It will enable parties to make an informed judgment on the merits of their cases earlier than tends to happen today, because they will have earlier access to the information they need

[1016] Ahmed, M., & Pennells, C., (2017), 'Online courts take the stage: Pre-action protocols & the briggs. online court', New Law Journal, Vol 167, Issue 18, pp 7746.

[1017] Its overriding principle is that justice must be done and provides the litigants to have their case resolved with reasonable expedition in a manner that invests the process with appropriate sanctions, inducements and time constraints calculated to reduce cost. It also streamline procedures to encourage early discussion.

[1018] Halsbury's Laws of England (2015), 'Civil Procedure Rule', Vol 11, paras 1–503.

[1019] Civil Procedure Act 1997, S 1, Sch 1.

[1020] *Cundall-Johnson v Whipps Cross University Hospital NHS Trust* [2007] EWHC 2178; court stayed proceedings which had been commenced before the claimants had sent a pre-action letter of claim.

[1021] Gillen, J., (2012), 'Everything should be as simple as possible but not simpler: Practice and procedure in defamation proceedings', Northern Ireland Legal Quarterly, Vol 63, Issue 1, pp 137.

[1022] *Tilling v Whteman* [1980] AC 1; preliminary questions of law should be carefully and precisely framed so as to avoid difficulties of interpretation as to what is the real question which is being ordered to be tried as a preliminari issue.

5.9.1.2.: Letter of claim:

The claimant must notify the defendant of his claim in a letter at the earliest opportunity. This letter of claim should include the following information[1023]: Name of the claimant; sufficient details to identify the publication or broadcast which contain the alleged words; the defamatory statement; the date of publication. The letter of claim must describe the nature of the remedies sought; the facts or matters which make the claimant identifiable in the statement and any relevant details regarding the interpretation of the complained words[1024].

5.9.1.3.: Defendants' response to the claim:

The defendant must provide a response to this letter in a reasonably quick time[1025]. The defendant has 14 days to respond; however, it can be extended by communicating with the attorney of the claimant. If the defendant does not agree on the cost of claim, he can submit his response to the court[1026]. The response must include the following[1027]: To what extent the claim is accepted; whether further information is needed; whether the defendant accepts the claim in whole or part and the remedies. The defendant must include the meaning he attributes to his statement. If he needs more information, it must be specified the exact nature of required information[1028]. Under CPR 26.4(2) the defendant is entitled to request some time to adopt an alternative method and CPR 26.4 (3) empowers the court to extend the stay only if it is appropriate.

5.9.1.4.: Proportionality as to costs:

This Protocol requires both the claimant and the defendant parties, when communicating to each other must take into account proportionality[1029]. The idea is to

[1023] Paragraph 3 of the Pre-action Conduct and Protocols Practice Direction.
[1024] CPR, https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_def [Assessed 11th June 18].
[1025] Ahmed, M., & Pennells, C., (2017), 'Online courts take the stage: Pre-action protocols & the briggs online court', New Law Journal, Vol 167, Issue 18, pp 7746.
[1026] Section 3(5) of the Defamation Act 1996.
[1027] Rogers, W., & Milmo, P., (2008), 'Cat Libel and Slander', (11th Ed, Sweet & Maxwell, London), pp 1066.
[1028] Ministry of Justice, Pre-action Protocol for Defamation - https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_def [Assessed 8th March 2018].
[1029] Higginson Securities Ltd v Hodson [2012] EWHC 1052.

limit costs proportionate to the nature and gravity of the case[1030]. The court will judge whether costs sanctions are appropriate in line with the principles of pre-action protocol[1031].

Part B: In Practice:

It has been seen that ordinary social media users relinquish a claim for damages if the objectionable contents are removed[1032]. Besides, out of court settlements are also feasible options from small social media libel claims. However, for corporate entities, celebrities, and business organisations damages could be very large because 'libellous words' reach to millions of users. It is another debate if millions of users would view those words. However, it is a fact that internet publication can be larger than all the largest broadcast or print media outlets[1033]. In the circumstance, when it is inevitable to avoid court, a proper libel claim can be pursued. The following three practical issues may arise:

1. Before the claim:

The claimant must seek the answers of the following three questions arise[1034]:

1. Who is the author (see-5.9.1.4)
2. Who is responsible for the publication (see-5.9.1.5)
3. What are the steps to be taken to remove this material or bring a legal action (see-5.9.2)

2. When the claim is prepared:

Before, preparing a claim, the claimant must know[1035]:

[1030] Order 1 Rule 1 A of the Rules of the Court of Judicature (NI) 1980.
[1031] *Halsey v Milton Keynes General Trust* [2004] EWCA Civ 576.
[1032] Internet Defamation in Cyberspace, online Url: http://www.adlexsolicitors.co.uk/internet-defamation.htm [Assessed 14th Sep 2017].
[1033] Rai, N., & George R. C., (2013), Defamation in Cyberspace; Available online at: http://www.legalservicesindia.com/articles/defcy.htm [Assessed 14th Sep 2017].
[1034] *Mole v Hunter* [2014] EWHC 658 QB; to establish a defamation claim, the claimant must have a full grasp of all the key facts and set them out fully in its claim form and particulars.
[1035] Pre action protocol for defamation, CPR r 3.1.

1. The content objectionable material
2. The URL at which the objectionable material is published
3. Which search engine lists that URL

3. When the claim is forwarded:

If a claim has been forwarded the logical steps for a judge to consider are[1036]:

1. Decide the meaning(s) of the statement applying Sir Anthony Clarke MR[1037] principles (see-5.5.1)
2. Determine whether the meaning(s) arrived at have a defamatory tendency (under common law tests) (see-7.14)
3. Must consider whether the 'Serious Harm' requirement is satisfied (see-7.16)
4. Make findings of the extent of publication (see-7.19)

However, the main concern for the victim is to identify the right defendant[1038].

5.9.1.5.: Who do you sue?

In internet defamation the identity of the publisher, in the most cases, is obvious: (1) If mainstream media – a journalist, (2) if a blog – an author, (3) if social media – an identified user. The claimant can bring an action against these primary defendants, in the event of potential defamation. However, in some instances, when the publisher is not known - anonymous[1039], unreachable - ignores the court order (foreign defendant), the claimant may sue the secondary publisher (hosts or search engines)[1040]. If the defendant is the 'man of straw', the claimant's perspective issue becomes to analyse

[1036] *Monroe v Hopkins* [2017] EWHC 433 (QB); As per Waby J at 24.
[1037] In *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 at [14] Sir Anthony Clarke gave this frequently cited summary of the principles to be applied when deciding meaning; See Appendix-V.
[1038] Gould, K., (2017), 'Locating a "threshold of seriousness" in the Australian tests of defamation', Sydney Law Review, Vol 39, Issue 3, pp 333-363.
[1039] A user can sign up to social media sites with fake name, a user in the dark web, or shielded by a clock of anonymity by using proxy registrant service or VPN; claimant can request the court for 'unmasking orders' to compel disclosure of the identity of anonymous user.
[1040] Perry, R., Zarsky, T., (2015), 'Who Should Be Liable for Online Anonymous Defamation?', The University of Chicago Law Review Dialogue, Vol 82, 162.

whether the defendant is worth suing for damages (see-7.18). In the *McDonald's*[1041] case, the claimant was awarded £76,000; however, the damages were unrecoverable because the defendants were two un-waged people. In such scenarios, the claimant would prefer to sue ISP[1042] or the website operator (Facebook or Twitter), which hosted libellous contents. These companies are resourceful to afford damages claims; however, most countries protect service providers against such claims[1043]. Search engines may be liable for such claims under data privacy and 'Data Protection Act[1044]'. Similarly, CA concluded that Google could be liable as a publisher for its 'Blogger platform'[1045]. As a general rule[1046], a libel claim against service providers will not be deemed a legitimate legal option[1047].

5.9.1.6.: Claim against primary defendant:

The victim must bring libel claim against the entity that lowered his reputation, which could be an individual or a corporation (see-6.8). A legal procedure has to be adopted and the suit must be filed in a proper jurisdiction (see-6.6). Appropriate court determination depends on jurisdictional analysis (see-2.12). In doing so, compliance with the pre-action protocol is the key to success (see-5.9.1.1). Primary defendant is further detailed later (see-7.18)

5.9.2.: Overview of libel claim procedure:

The starting point for the claimant, whose reputation is harmed, is to confront the defendant by sending a legal notice, unless the defendant is not worth suing. The defendant may be a foreign nation, so permission to serve out of jurisdiction is required

[1041] *McDonalds Corp v Steel (No. 4)* [1995] 3 AER 615.
[1042] Merely providing a customer with an internet access service does not render an ISP liable for defamatory material; *Bunt v Tilley & Ors* [2006] EWHC 407 (QB).
[1043] ECD 'Directive on electronic commerce 2000/31/EC (ISPs, like 'Messenger', are not content providers, therefore, they should not have legal liability); In 1995, Congress passed the Communications Decency Act, which protects ISPs and Website Hosts from defamation claims, S5 of the Defamation Act 2013 also protects ISPs and website operators (see-2.13.2).
[1044] *Google Spain SL, Google Inc. v Agencia Espanola de Proteccion de Datos (AEPD) and Mario Costeja Gonzalez* (Case C-131/12).
[1045] *Tamiz v Google Inc* [2013] EWCA Civ 68; Lord Dyson concluded that the ISP (respondent) had merely provided the platform.
[1046] Internet Watch Foundation (IWF); Internet Services Providers Association UK; Evans, J., (2006), 'ISP liability for defamation?', Periodical Publishers Association, http://www.ppa.co.uk/ [Assessed 8th March 2018].
[1047] ISPs do not have a general obligation to monitor content generated by third parties.

(see-6.9, 2.12). If the defendant is unidentifiable, the claimant can apply legal pressure to the website operator or the host of that website because they can be convicted for a libel claim, in certain circumstances. The victims can also seek the removal of the relevant libellous statement from search engines (Google, Hotmail, and Yahoo) or other social networks[1048]. Using the shield of 'freedom of expression[1049]', search engines do not lightly remove material from their natural search results[1050]. However, if they receive a detailed and comprehensive submission on the factual/legal basis of the case, they may act accordingly[1051]. This thesis understands from the existing literature[1052] that they will comply without the need for court action. Once a notice of removal is served to ISPs, they will be bound to act according to the notice. CA[1053] established that if the site operator has already received a notice of defamatory contents, he will not be able to avail the immunity of Section 1 of the Defamation Act 1996[1054] if he failed to follow the notice.

5.9.3.: Alternatives to legal proceedings:

There is a massive industry, lawyers, private investigators, PR specialists and computer experts, working to take down postings on social media. They are employed to de-mote negative comments on search engines. They track originators of the contents and issue removal orders. Social media users can hide their identity but for anonymous defendants, there is a legal way of identifying them[1055] by using 'Norwich Pharmacal

[1048] Gallardo, K. L., (2017), 'Taming the internet pitchfork mob: Online public shaming, the viral media age, and the communications decency act', Vanderbilt Journal of Entertainment and Technology Law, Vol 19, Issue 3, pp 721.

[1049] Erdos, D., (2014), 'Data protection and the right to reputation: Filling the "gaps" after the defamation act 2013', The Cambridge Law Journal, Vol 73, Issue 3, pp 536.

[1050] Burshtein, S., (2017), 'The true story of fake news', Intellectual Property Journal, Vol 29, Issue 3, pp 397; Most search engines are protected as an interactive computer service provider under Section 230(c) of the Communications Decency Act.

[1051] Kerr, J., (2016), 'What is a search engine?: The simple question the court of justice of the European union forgot to ask and what it means for the future of the right to be forgotten', Chicago Journal of International Law, Vol 17, Issue 1, pp 217-243.

[1052] Oster, J., (2015), 'Communication, defamation and liability of intermediaries', Legal Studies, Vol 35, Issue 2, pp 348-368; Vamialis, A., (2013), 'Online defamation: Confronting anonymity', International Journal of Law and Information Technology, Vol 21, Issue 1, pp 31-65; Data Privacy Laws and right to be forgotten.

[1053] *Tamiz v Google* [2013] EWCA Civ 68; ISPs will not be held liable for any content uploaded or generated by any third party, unless the courts order them to remove or block certain content and they fail to do so in the given term.

[1054] Godara, S., (2013), 'Defamation in Cyber Space: Who do you sue?', 8th International Conference on Information Warfare and Security (ICIW).

[1055] Perry, R., Zarsky, T., (2015), 'Who Should Be Liable for Online Anonymous Defamation?', The University of Chicago Law Review Dialogue, Vol 82, 162.

Order' (see-5.9.3.1). It can only be obtained by applying to court because without this 'order' websites hosting third-party information owe a duty of confidentiality not to disclose personal information voluntarily[1056]. It is a discretionary remedy because it is intrusive and extraordinary so it is exercised with caution[1057]. The applicant for this order has to show that the information sought is required to permit a perspective claim to proceed. It is not compulsory for the claimant to make a firm commitment to start the action[1058].

5.9.3.1.: What is a Norwich Pharmacal Order?

This order, allows a claimant to acquire necessary information to take action against an unknown defendant. It requires a third party who is 'mixed up' in the wrongdoing to disclose information as to the identity of the wrongdoer[1059]. In the case of Yahoo [2017][1060], it was held that 'Norwich order' is issued when a third party is required for a potential action to disclose information that would otherwise be confidential. Justice Robyn observed that the following factors apply to an application for a Norwich order:

1. Does the applicant has evidence of a valid claim
2. Does it appear that the third party is involved in the acts complained of
3. Is the third party the only practical source of information available
4. Can the third party be indemnified for any costs, to which the third party may be exposed as a result of the disclosure
5. Do the interests of justice favor obtaining the disclosure

5.9.3.2: "John Doe" action:

It is a legal action against a fictitious individual. It is followed by the registration or filing of the case in out-of-state jurisdictions to webmasters, site administrators and internet service providers (ISPs)[1061]. This order request for IP addresses and other

[1056] The Data Protection Act 1998.
[1057] *Norwich Pharmacal Co v Customs and Excise Comrs* [1974] AC 133.
[1058] *Carleton Condominium Corporation No. 282 v Yahoo! Inc.* [2017] ONSC 4385.
[1059] *Norwich Pharmacal v Commissioners of Customs and Excise* [1974] AC 133.
[1060] *Carleton Condominium Corporation No. 282 v Yahoo! Inc.* [2017] ONSC 4385.
[1061] Larson, R. G., & Godfread, P. A., (2011), 'Bringing John Doe to Court: Procedural Issues in Unmasking Anonymous Internet Defendants', Wm. Mitchell L. Rev., Vol 38, pp328.

account information of alleged defendant. Such a process can become very complicated so computer forensic experts are sometimes required to assist with the case[1062].

5.10.: Summary:

A false statement or an opinion, in the form of words or a graphical image, which significantly reduces the reputation of an individual, group, nation, religious beliefs, ethnicity, race, government, product or business, in the eyes of right-thinking members of a society is called defamation[1063]. Defamation via social media can be a statement, phrase, comments, a tweet, forwarding a published statement or uploading such material which may contain the defamatory element. The 2013 Act protects an individual's reputation and privacy matters, which are also recognised by human rights instruments and British Bills of rights[1064].

Defamation via social media is one of the most damaging concerns invoked by cyberspace because 'law of defamation' is at times confusing and seemingly illogical[1065]. Justice Abrahamson[1066] classed it as an area of law renowned for its complexity. Defamation is an old concept; however the commercialisation of the internet introduced new methods of defamation. To date, there are no specific provisions to address cyber libel. Common law countries have adjusted traditional defamation norms and international agreements to cope with this challenge. This thesis will differentiate between traditional and modern challenges of defamation because the ease with which communication flows across virtual borders has made 'traditional law' application an area of great public concern. For instance, the 2013 Act requires the proof of 'viewership of libellous content' to establish serious harm. This is not the case in traditional approach. Besides, social media publication is not about numbers because a single view can have diverse effects. Similarly, publication of content to many users

[1062] Grimmelmann, J., (2010), 'The Unmasking Option', Denver University Law Review, Vol 887, Issue 23, pp 56.
[1063] Warshaw, A., (2006), 'Uncertainty from Abroad: Rome II and the Choice of Law for Defamation Claims', Brooklyn Journal of International Law, Vol 32, Issue 1, pp 270-312.
[1064] Barendt, E., (2017), 'Defamation Law', Journal of Media Law, Vol 9, Issue 2, pp 291-295.
[1065] *Speedie v Sunday Newspapers Ltd* [2017] IECA 15; Mullis, A., & Scott, A., (2009), 'Something rotten in the state of English libel law?: A rejoinder to the clamour for reform of defamation', Communications Law, Vol 14, Issue 6, pp 173-183.
[1066] *Denny v Mertz* [1982] 106 Wis. 2d 636, 674.

may not be sufficiently serious about giving rise to a libel claim. A single statement related to one victim can be more harmful than a statement to the whole world[1067].

5.11.: Conclusion:

This chapter concludes that there are many formalities and pre-action protocols required to bring a libel claim. It is a very expansive, time-consuming and stressful procedure. The best remedy could be restoring the claimant's reputation, vindicating his name and compensating for the distress caused[1068]. Therefore, the courts must grant an injunction to stop the statement from further publication[1069]; however, judges required proof of serious harm to grant such an injunction. England is already famous for its claimant-friendly jurisdiction because judges already provide incentives to libel victims[1070]. It restricts speech liberty and produces an imbalance between freedom of speech and reputation rights[1071]. It is recommended that a more flexible approach is required when it comes to granting an injunction because there are further issues of meaning, serious harm, publication and jurisdiction which can add to the 'to do list' of a victim. These issues are considered in next chapters, which may allow this thesis to offer some suitable suggestions to compensate a victim via simple claim procedure.

[1067] *Delfi As v Estonia* [2015] (Application no. 64569/09), ECHR Grand Chamber, Strasburg.
[1068] The overwhelming majority of victims find a disturbance in their daily life. The pressure of defamation suits, disappointment due to misplaced confidence, shock, fear, feelings of injustice, humiliation and a sense of dispossession or lack of control over their data.
[1069] *Bonnard v Perryman* [1891] 2 Ch. 269 CA; without proof of harm injunction may not be granted.
[1070] Hartley, T. C., (2010), 'Libel Tourism' and Conflict of Laws, International and Comparative Law Quarterly, Vol 59, Issue 1, pp 25-38.
[1071] Tamunokuro, G., (2016), 'Limitations on the Freedom of Speech by Defamation in UK Law', Academia.edu; Available at: https://www.academia.edu/6910942/Limitations_on_the_Freedom_of_Speech_by_Defamation_in_UK_Law [Accessed 10th June 2018].

Chapter 6

Court's competence

Preliminary issues of personal jurisdiction

6.1.: The overview of this chapter:

"[T]he foundation of jurisdiction is based on power in physical spaces[1072]"
Justice Holmes

A libel claim involving a substantial foreign element (non-EU) is quite possible in England[1073] but it requires several complications to be carefully surpassed (see-6.5). A few of these obstacles include 'multiple defendants', 'questions of foreign law' and a challenge over jurisdiction which can be lengthy and complex (see-4.3). The claimant is required to obtain court's permission to serve writ, which must be correctly executed and any challenges must be dealt with before the court proceedings can be initiated (see-6.8.2.1). This will be a preliminary hearing, so a full consideration of the merits and evidence will not be needed, at this stage. Judge will make the decision based on the litigant's argument and once jurisdiction is decided, the claimant can focus on resolving the actual issues (see-5.5, 5.7). This chapter investigates personal jurisdiction rules, which apply to a defendant, who is not resident in the UK, the EU, Switzerland, Iceland or Norway. These may, of course, be the rules that will apply to all defendants after the Brexit.

Whether the court will exercise its jurisdiction depends on the factors explained in the following sections:

Part A: Principles of Jurisdiction
Part B: Application of Jurisdiction
Part C: Overview of English Jurisdiction
Part D: Structure of English Jurisdiction

[1072] McDonald v Mabee [1917], U.S. 90, No 135 at 234; The foundation of jurisdiction is physical power.
[1073] The residence, nationality, domicile or presence of the person bringing the claim is not directly relevant to the question of jurisdiction; if a non-British claimant follows pre-action protocol he can invoke English jurisdiction (see-5.9.1.1).

Chapter 6

Part A

Principles of Jurisdiction

In previous chapters, the central question emerged that how courts can coordinate the issues concerning social media libel into traditional framework of jurisdiction[1074]. Jurisdiction as an issue is even more critical here because during social networking, users publish a lot of irrelevant content[1075] (potentially defamatory) (see-5.8.2). If somebody publishes/shares/uploads defamatory material online, he will have to bear the liability (see-2.10.1). The victims prefer to sue these publishers in their domestic courts (see-5.9.1.1); however, most of the defendants are domiciled in other jurisdictions[1076]. For instance, the primary instruments (Twitter/Facebook/Google) for resourcing the potential libellous information are based in the US but provide subscriptions globally. They operate by the storage of data, which subscribers can download on their networks and then access anywhere in the world (see-2.3.2). The subscribers can be anywhere, which raises global jurisdiction issues for foreign-based defendants. This 'global jurisdiction' depends upon the application of 'choice of law' rules[1077]. Section A will evaluate the principles of personal jurisdiction in comparison with freedom of speech and application of choice of law rules.

6.2.: Jurisdiction for libel or free speech:

Social media's meteoric rise has provided vast areas of new opportunities to defame[1078]. Since then, defamation has become a common feature of the legal systems of many common law countries[1079]. They allow victims to initiate a libel action for any false

[1074] The social media networks have developed overnight and the legal system has had to react in order to formulate new legal principles. This has been achieved in many instances using the reasoning from cases ruling on libel in print media.
[1075] The content on social media Web sites is user-generated, which allows its subscribers to download information almost instantaneously. It provides the account holders a tool to disseminate information that may damage the reputation of individuals and groups.
[1076] Elkins, D., (2017), 'No jurisdiction from social media posts', Virginia Lawyers Weekly; online at https://valawyersweekly.com/ [Assessed 14th August 2018].
[1077] A.B.A, (2000), 'Jurisdiction in Cyberspace Project: Achieving Legal & Business Order in Cyberspace', A Report on Global Jurisdiction Issues Created by the Internet, American Bar Association, SEC. Bus. L. 5.
[1078] Auda, A.G.R., (2016), 'A proposed solution to the problem of libel tourism, Journal of Private International Law, Vol 12, Issue 1, pp 106-131.
[1079] Galbally, P. J., (2015), 'A 'serious' response to trivial defamation claims: An examination of s 1(1) of the Defamation Act 2013 (UK) from an Australian perspective, Media and Arts Law Review, Vol 20, pp 213-250.

statement (printed, uploaded, shared, published or broadcasted), which diminished their respect or defamed their character. It is arguable whether the liberty to start proceedings for defamation via social media is a threat to freedom of expression[1080]. Traditional laws are unable to maintain a balance between individual user's privacy and freedom to share information[1081] because of claimant-friendly approach. England took a step to adopt the digital environment by reforming existing defamation laws. Section 1 requires proof of 'serious or potential harm', which caused a reasonable person to have low esteem in society[1082]. This 'seriousness threshold' may provide a shield against trivial proceedings[1083], which can be an important shift in modernising libel legislation to protect 'freedom of expression'. However, since 2013, interpretation of 'serious harm' has been very confusing because it contradicted existing law (see-7.16). The *Theedom* [2015][1084] case, established that it had changed the substantive law and made it harder to bring a libel claim[1085].

Freedom of speech in social media can only be protected if the users have knowledge of how communication via social media is regulated and which legal system is authorised to regulate it (see-5.8.1). Nevertheless, it is impossible to achieve consistency concerning communication freedom because 'appropriateness of speech' standards vary across borders. The courts in the Western World have attended to the value of free speech but its balance in defamation doctrine is not maintained in the third world countries (see-5.8.3). For instance, in China, India, North Korea, and Pakistan, much greater restrictions are placed on 'freedom of expression[1086]'. In such countries, peoples opinion may lead to prosecution for treason and considered an insult to the Head of State, government or courts. Similarly, Muslim countries have their standard of free speech about religion and culture (see-5.8.3). These remotely differing approaches to freedom of speech imply that consistency of judgments would not be attainable. In the

[1080] Explanatory Notes, Defamation Act 2013 (UK), c 26 (2).
[1081] Mullis, A., & Scott, A., (2009), 'Something rotten in the state of English libel law?: A rejoinder to the clamour for reform of defamation', Communications Law, Vol 14, Issue 6, pp 173-183.
[1082] Defamation Act 2013 (UK) c 26, s 1(1).
[1083] Krishan, S., (2013), 'Lord Lester's Defamation Bill: Striking a Balance?', Entertainment Law Review, Vol 23, Issue (2), pp 25.
[1084] *Theedom v Nourish Training (t/a Recruitment Colin Sewell)* [2015] EWHC 3769.
[1085] *Sobrinho v Impresa Publishing SA* [2016] EWHC 66 (QB).
[1086] Reang, P., (2004), 'Freedom of Expression and Right to Information in Asian Countries', A Regional Analysis of Challenges;
https://www.internews.org/sites/default/files/resources/InternewsEU_ASEAN_FoE_and_RTI_Study_2014.pdf [Assessed 17th August 2018]; Southeast Asia has the third largest number of internet users in the world – a figure that has grown by more than 30%, or 80 million people, in the past year alone.

absence of 'standard speech regulation', the courts are unduly burdensome to identify 'jurisdiction', 'applicable law' and 'choice of law', as Kirby J noted that it was not for the courts to introduce new rules to govern the internet/social media (see-2.6.2).

6.2.1.: Jurisdiction from claimant's perspective:

"Scholars who study conflicts of law are used to regulate conflicts - Goldsmith[1087]".

Social media users do not know what laws to take into account. They may be aware of their domestic laws but unaware of laws of the country with which they interact (see-5.8.2). Social media being a convergence of publishing and communications, allows global interactions but sovereignty based laws may hold publishers into an alien judicial system for content, which may be legal in their forum (see-5.8). For instance, questioning the president's integrity may be legal in the west but illegal in North Korea. Similarly, religious freedom is interpreted differently in Islamic countries (see-5.8.3). Nevertheless, traditional rules allow the claimants to choose a jurisdiction, where most favourable judgments can be obtained[1088]. For instance, if a person is defamed in Afganistan, then being a victim, he can issue the proceedings in[1089]:

1. The country of the defendant
2. The country of the claimant
3. The country where the tort occurred
4. The country where the injury manifested (injuries may occur in numberless countries)
5. The country where the ISP is located
6. The country of the co-defendant[1090]

Traditional jurisdictional legislation allows claimants to bring claim anywhere; however, such protection is also available for a defendant to a certain extent (limited degree) (see-2.12.3, 2.17.1).

[1087] Goldsmith, J. L., (1998), 'Against cyber anarchy', University of Chicago Law Review, Vol 65, Issue 4, pp 1199-125 at [148].
[1088] Hook, M., (2017), 'The "statutist trap" and subject-matter jurisdiction', Journal of Private International Law, Vol 13, Issue 2, pp 435; however, this liberty gave rise to the trend of 'forum shopping' in online libel.
[1089] Chen, W., & Goldstein, G., (2017), 'The Asian principles of private international law: Objectives, contents, structure and selected topics on choice of law', Journal of Private International Law, Vol 13, Issue 2, pp 411.
[1090] Art 7(3), Art 18, Art 19, Art 21 & Art 23 of Brussels I Regulation (recast).

6.2.2: Jurisdiction from defendant's perspective:

English libel laws are claimant-friendly because the defendant has to prove that the allegations are false or his statements/comments are 'true'. If the defendant fails to prevail in the libel claim, he will also bear a high level of costs, including legal fees (see-2.14, 5.9). Forum disadvantage to a defendant and selection of forum by a claimant, make grabbing trial jurisdiction by the court occasionally and unforeseeable[1091]. These uncertainties create conflicts with traditional private international law, which emphasises foreseeability and certainty in the determination of jurisdiction (see-4.2.2). For instance, some jurisdictions are pro-defendant (France), whereas some are pro-claimant (England). In a social media libel case, a defendant who resides in pro-defendant venue may transmit information into a pro-claimant venue. If the defendant is prosecuted in the claimant-friendly legal system, there is a genuine risk of incurring liability. Hence, while communicating via social media; potential defendants may restrict their speech to conform to the laws of the most restrictive jurisdiction to which they transmit information.

The defendant can always challenge any jurisdiction on the grounds of 'forum non convenience' (see-2.7.2, 2.17.1). Besides, Section 1 makes it difficult for the claimant's trivial claims to be initiated because 'seriousness test' has to be satisfied before issuing proceedings. This can favour the defendant.

6.2.3.: Jurisdiction from legal perspective:

A court can only assume jurisdiction over a defendant if it had followed due process of invoking personal jurisdiction (see-2.8.1). Every country owes a duty to perform due diligence before trying a case involving foreign element[1092]. Courts must have personal jurisdiction before issuing a writ on foreign defendant[1093]. Judges are obliged to exercise

[1091] *Deripaska v Cherney* [2009] EWCA Civ 849; if court allowed a leave to serve out case that the natural forum is other than England, it remains open to the court still to find England the "proper forum".
[1092] Nuyts, A., (2005), 'Due Process and Fair Trial: Jurisdiction in the United States and in Europe Compared' in Ronald A Brand (eds.), Private Law, Private International Law and Judicial Cooperation in the EU-US Relationship, 2 CILE Studies, pp 27.
[1093] Elkins, D., (2017), 'No jurisdiction from social media posts', Virginia Lawyers Weekly; online at https://valawyersweekly.com/ [Assessed 14th August 2018].

moderation and restraint in invoking jurisdiction[1094]. National courts can utilise discretion in deciding whether to exercise jurisdiction over foreign defendants; however, they should avoid undue encroachment on other's sovereignty[1095]. In the ambit of UN agreements[1096], if a legal authority imposes its power in an overly self-centered way, it may contravene international laws[1097]. Court of Justice[1098] noted that jurisdiction is an exercise of sovereign power and must not conflict with sovereign interests of other states. Therefore, if a court exceeds its limits, its unsophisticated conduct can interfere with standard arrangements of the international order established by the UN[1099]. If such breaches of sovereign limitation continue in social media cases, it may produce political, legal, and economic reprisals.

The start of proceedings without establishing 'personal jurisdiction' may also violate the sovereignty of the country where that defendant is ordinarily resident[1100]. The lack of jurisdiction over a foreign national can hold a court liable for exceeding its statutory powers without following due process[1101]. The principle of non-intervention is supported by public international law, where jurisdiction is determined by conventions, treaties or international agreements[1102] (see-2.8.1). Therefore, the requirement of 'personal jurisdiction' reinforces the concept of international non-intervention[1103] principles and it also protects the idea of individual liberty[1104].

[1094] Libel, N., (1961), 'Barriers to expanding personal jurisdiction', The University of Chicago Law Review, Vol 29, pp 569-585.

[1095] *Maubourquet v Wyse* [1867], 1 Ir.Rep. C.L. 471, 481; subject to its conception of sovereignty, a judgment not to be contrary to natural justice.

[1096] Cassel, D., (2001), 'A framework of norms', Harvard International Review, Vol 22, Issue 4, pp 60.

[1097] Davidson, S., (2008), 'International considerations in libel jurisdiction', Journal of the Oxford Round Table, Forum on Public Policy, pp 1-28.

[1098] German Federal Court of Justice (BGH), 2 July 1991, 115 BGHZ 90.

[1099] Charter of United Nation, San Francisco (1945); https://treaties.un.org/doc/publication/ctc/uncharter.pdf [Assessed 18th March 2018].

[1100] A state is prima facie free to legislate or regulate with respect to persons or events beyond its territory, as long as doing so does not interfere with the same right of states that may have a closer connection to those persons or events - Currie, J.H., (2001), 'Public International Law', (2nd Ed, Irwin Law, Toronto), pp 299.

[1101] Eckert, A., (2001), 'The Non-Intervention Principle and International Humanitarian Interventions', International Legal Theory, Vol 7, Issue 1, pp 49-58.

[1102] William, G., (2015), 'Rules for Offline and Online in Determining Internet Jurisdiction, Global Overview and Colombian Cases, International Law, Vol 26, pp 13-62.

[1103] The principle of non-intervention in internal affairs of other states is ' designed to ensure that each state respects the fundamental prerogatives of the other members of the community; Cassese, A., (2005), 'International Law', (2nd Ed, OUP, UK), pp 55.

[1104] Ehrenzweig, A., (1956), 'The Transient Rule of Personal Jurisdiction: The "Power" Myth and Forum Conveniens', The Yale Law Journal Company, Vol 65, Issue 3, pp 289-314; *Corp. of Ireland v Compagnie des Bauxites de Guinee* [1982] 456 U.S. 694.

6.2.3.1.: How to establish personal jurisdiction:

To establish personal jurisdiction, a court should not confine its analysis solely on convenience. In today's technological era, the question of what is 'fair and appropriate' must be extended to a degree where concerned community's views must be taken into account. For instance, Donald Trump, who Tweeted 'the Muslim are terrorists' (defamation of class, see-5.5.2.1), might have presidential immunity from defamation. The US courts must give due regard to the feelings of the Muslim world[1105] while declining jurisdiction based on appropriateness. Such immunity may not be available to Donal Trump if the proceedings are issued in Iran; however, Iranian court must have personal jurisdiction before initiating litigation process. Interestingly, the court will have personal jurisdiction if the claimant is domiciled for the purpose of service of the writ. This is based on physical presence (see-2.3.1). In the *Bestolov* [2017][1106] case, the Russian businessperson was held to be domiciled in England for jurisdictional purpose.

The above-explained high threshold of the 'reasonableness' standard implies that it is unlikely that courts may impose jurisdiction over foreign defendants[1107]. The assumption of personal jurisdiction becomes an important element in deciding social media cases (see-6.4). The importance of jurisdiction lies in the fact that any activity in digital cyberspace may have the potential to cause harm to a real person in the physical space[1108]. The exercise of jurisdiction and issuing an injunction is the quickest way to reprieve victim but without personal jurisdiction, court has to dismiss the case without a trial.

6.2.3.2.: Jurisdiction: Direct versus indirect:

In online libel claims, direct and indirect jurisdiction may be treated similarly; however, there is some analytical difference in both terms.

[1105] Defamation of a class is already discussed in the Chapter 5.

[1106] *Bestolov v Povarenkin* [2017] EWHC 1968 (Comm); this judgment is important for any foreign nationals who can be held domiciled in England for jurisdiction purposes even if they are resident and tax domiciled in another country.

[1107] It is arguable that what is sufficient to 'assume' personal jurisdiction because a website can be accessed at any geographical location.

[1108] Mills, A., (2017), 'The 'Hague choice of court convention' and cross-border commercial dispute resolution in Australia and the Asia-pacific', Melbourne Journal of International Law, Vol 18, Issue 1, pp 1-15; online harm may be in the form of defamation, breach of privacy, violation of personality right, hacking, violation of IP rights, bullying or even degrading a person's character.

1. **Direct jurisdiction:** The court, which decides the case, is called the court with 'direct-jurisdiction'. This court refers to the issue of jurisdiction as a requirement for adjudicating a libel claim. It is also called rendering court, which must have personal jurisdiction to give judgment. Otherwise, its decision will be invalid[1109].

2. **Indirect jurisdiction:** This is the court, where the claimant seeks enforcement of the rendering court's decision. It refers to the issue of jurisdiction as a requirement for recognition of judgment. It is also called 'requested court', which recognises and enforces the decision of 'rendering court'. If the requested court finds that the rendering court lacked personal jurisdiction, it will not impose that decision[1110].

Both the courts are independent because they must be based in different countries[1111]. These courts are not bound to follow each other's standards. For instance, the rendering court may justifiably assume jurisdiction under its standard, whereas enforcing court can refuse to recognise that judgment under its standards[1112]. The enforcement of judgment is one of the prime issues of private international law; however, it is beyond the scope of this thesis.

6.3.: Issues of jurisdiction in social media:

Determination of jurisdiction for digital communication disputes is a critical legal issue. It has become the central form of the battle to 'establish the rule of law in the information society[1113]'. Why is it difficult to assume jurisdiction in social media libel claims by applying traditional provisions? The answer depends on the degree 'social media' is different from traditional broadcasting and other means of global communication. Publication of libellous material via social media always involves

[1109] EU Regulations (Brussels I Regulation (Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, [2001] OJ L 12/1).
[1110] Lugano Convention (Lugano Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, [2007] OJ L 339/3).
[1111] If both the courts are situated in one country than there is no need for indirect jurisdiction because the court which decides can also enforce its judgment.
[1112] Brussels Convention (Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters [1986] OJ C 298/1.
[1113] Reidenberg, J. R., (2005), 'Technology and Internet Jurisdiction', University Penn Law Review 1951, Vol 153, Issue 6.

various states (see-2.7.2). The traditional jurisdiction procedure is complex, even within a single legal system: There may be distinct subdivisions of a jurisdictional query (see-2.9.1). In libel claims, the question of jurisdiction is not limited to a single state, so it has to be resolved in a comparative or transnational context. Concurrent jurisdiction can also be a significant factor because different legal systems conceive jurisdiction in different ways (it is beyond the scope of this thesis).

There are many challenges in sorting legal issues of jurisdiction in social media. Internet publication, across conceptually amorphous borders, is already befuddling the judges in acclimatising conflict of law doctrines to cyberspace. The adoption of jurisdictional concept becomes even more complicated and inconsistent in social media case[1114], for distinct reasons:

1. Cyberspace acts as a buffer between the defendant and social media i.e. this technological intermediary not only diffuses the defendant's geographical reach but also complicates the defendant's purpose (see-2.5.1.2).
2. Defamatory statements mostly lead to intangible harm i.e. it may be impossible to predict the place of intangible harm in social media[1115].

To decide libel claims judges spent more time to understand the uniqueness of cyberspace technology, whereas, they should focus on the traits, it shares with other technology[1116]. For instance, the internet may not work without a router, modem, booster or a device, so the location of the generation of the comments can be used as a 'connecting factor'. Whereas, judges assume jurisdiction based on where the defamatory conduct occurred. In social media, it may be a wasted argument because it diffuses activity across geographical locations. Understandably, conduct occurs where the user disseminates defamatory material via the internet, so identifying other locations, as salient to jurisdiction seems arbitrary[1117].

[1114] Erbsen, A., (2015), 'Personal Jurisdiction Based on Intangible Harm, The Journal of Things We Like Lots', Available online at: http://courtslaw.jotwell.com/personal-jurisdiction-based-on-intangible-harm/ [Assessed 2nd January 2017].
[1115] *Alvaro Sobrinho v Impressa Publishing SA* [2016] EWHC 66 (QB).
[1116] *Reno v ACLU* [1997] 117 S., Ct. 2329 – US supreme court labelled internet as a unique medium which is located in no particular geographical location but available to anyone, anywhere in the world.
[1117] Trammell, A., & Bambauer, D., (2015), Personal Jurisdiction and the "Interwebs", Cornell Law Review, Vol 1129, Issue 100.

6.3.1: Place of damage in libel:

The victim may suffer various natures of damages at various locations. The place where the damage occurred is not arbitrary. For instance, a celebrity may seem to suffer reputational damage at the location where he has many followers as compared to where he is less famous. The 2013 Act simplifies this dilemma by defining the serious harm: A statement is no longer defamatory unless the claimant can show that its publication has caused serious harm to his reputation[1118]. It also reinforces the jurisprudence established in the cases of Jameel[1119] and Thornton[1120] (see-7.16).

On the other hand, evidence of serious harm does not guarantee personal jurisdiction to a single court because harm can be suffered in more than one location at the same time. The Maryland court[1121] highlighted this issue where judge rejected the claim, despite the harm suffered in the forum. Court reasoned that there is a lack of personal jurisdiction because of the defendant 'British media company', based in Kensington, had no ties to Maryland. Arguably, there was a direct connection because the website receives 4,600 article views per hour and 72,600 unique browsers per day in the state. Such decisions also challenge the idea of personal jurisdiction based on website connections (it is beyond the scope of this thesis).

6.3.2: Place of damage in social media:

There is an argument to be made that the local availability of 'social media sites' should suffice for personal jurisdiction in the claimant's home state. For instance, Facebook is based in the USA but its subscribers are based in every country (see-7.3). Besides, the victim may experience 'serious harm' most acutely in his domiciled state. This may be straightforward if both the claimant and the defendant are domiciled in the same state. Whereas, if the defendant is not domiciled in England, S9[1122] states: "the court will not

[1118] *Alvaro Sobrinho v Impressa Publishing SA* [2016] EWHC 66 (QB).
[1119] *Jameel v Dow Jones & Co Inc.* [2005] EWCA Civ 75.
[1120] *Thornton v Telegraph Media Group* [2010] EWHC 1414 (QB).
[1121] *Melania Trump v Mail Media, Inc* [2017] Supreme Court NY, Commercial Division, No. 650661/2017.
[1122] Defamation Act 2013, chapter 26 - Action against a person not domiciled in the UK or a Member State etc., section 9, available online at:
http://www.legislation.gov.uk/ukpga/2013/26/section/9/enacted [Assessed 2nd January 2017].

have the jurisdiction to hear a libel claim" (see-2.13.1.3). For instance, judge Burrell[1123] rejected Melania case against a British company because of the lack of personal jurisdiction. However, he accepted her other claim against Tarpley.net, for a trial because it was domiciled in the home jurisdiction.

English courts may only have jurisdiction if it is satisfied that it is one of the most appropriate courts[1124] to start the proceedings (see-2.17.1). The judges would consider many factors, including the extent of any publication in England in contrast to the publication outside the jurisdiction[1125]. The court will also evaluate whether there has been any substantial damage to the claimant's reputation within England boundaries (see-7.19). This section raises the question that the courts should identify whether the defendant 'aimed' to cause the harm within the forum[1126]. This will help minimise the application of different rules for public figures and ordinary individuals. In her claim, Melania Trump[1127] presented her case as a model rather than the wife of the president Trump, otherwise, she had to prove actual malice (a standard for celebrity claimant) (see-7.20).

[1123] *Trump v Tarpley* [2016] Md. Cir. No V424492; this website by political blogger Griffin Tarpley was based in Maryland.
[1124] There is a distinction between "natural forum", as the place with which the case had the closest connection and ultimately the "appropriate or proper forum", which a claimant could establish; even if England is not the "natural forum" if justice require it becomes the proper forum.
[1125] *Brett Wilson LLP v Person(s) Unknown, Responsible for the Operation and Publication of the website www.solicitorsfromhelluk.com* [2015] EWHC 2628 (QB), [2015] All ER (D) 78 (Sep).
[1126] Wilson, I., (2014), The Implementation & impact of the Defamation Act 2013, The Law Society Gazette. Online url: http://www.lawgazette.co.uk/law/legal-updates/the-defamation-act-2013/5039959.article [Assessed 30th November 2016].
[1127] Morse, D., (2017), 'Melania Trump Reaches Settlement in Libel Lawsuit Against Maryland Blogger', Washington Post [Assessed 28th Nov 2017].

Chapter 6

Part B

Application of Jurisdiction

Traditionally, location is used as the prime criterion for jurisdiction[1128] because it was created for geographical bound activities, not for social media transactions[1129]. Therefore, geographical principles should not be used to regulate social media because application of traditional principles may become incoherent when applied to cyberspace[1130]. Jurisdiction deals with the territory, so a court can only assume jurisdiction if a link can be established between the transaction and the state; or to be more precise, to an actor (person, government) and/or computer[1131]. It is debatable that there should be no issues of jurisdiction[1132] because cyberspace extends to everybody and everywhere. Therefore, in online communication, the location of (conduct, damages, parties, properties, uploading, downloading and torts) should be irrelevant[1133]. There is a need to understand the importance of jurisdiction to apply traditional rules to online users who are actually based at a physical location (see-2.3.1.2).

6.4.: The importance of jurisdiction:

'[E]very State possesses exclusive jurisdiction and sovereignty within its territory', 'No State can exercise direct jurisdiction without its territory[1134]'.

IThe importance of jurisdiction varies depending on the nature of dispute. This thesis differentiates the importance of jurisdiction into the following categories:

1. Nature of dispute (civil or criminal)
2. The medium used (digital or traditional)

[1128] *Midland Bank Plc v Laker Airways Ltd* [1986] Q.B. 282.

[1129] Kohl, U., (2010), 'Jurisdiction and the Internet Regulatory Competence over online Activity', (2nd Ed, Cambridge Book Online, Cambridge), pp 20.

[1130] Cameron, B., (2000), 'Jurisdiction and the Internet', Computer & Law, Regulating e-Business conference, THC Press, pp 28-29.

[1131] Lodder, A., R., (2015), 'Analysing Approaches to Internet Jurisdiction based on a model of Harbours and the high seas, International Review of Law, Computers & Technology, Vol 29, Issue 3, pp 266-282.

[1132] Bigos, O., (2005), 'Jurisdiction over cross-border wrongs on the Internet', International & Comparative Law Quarterly, Vol 54, pp 588–9.

[1133] Tsagourias, N., Buchan, R., (2015), 'Research Handbook on Cyberspace and International Law', (1st Ed, Edward Elgar Publishing, UK), pp 19; Hanssen, S., & Stakemann, H., (2001), 'Cyberspace Jurisdiction in the U.S. (From an Alien's Point of View) - The International Dimension of Due Process', Norwegian Research Centre for Computers and Law, Vol 5, Issue 1, pp 457.

[1134] *Pennoyer v Neff* [1878] 95 US 714.

3. Method used (print or social media)

1. Jurisdiction for civil or criminal issues

1. The activities, which threaten national security, fall under international standards for jurisdiction. Inciting torture, war crimes, or genocide is treated as a universal crime to publicly. Any court can decide these universal offences extraterritorially; regardless of the citizenship or location of the alleged person[1135] (universal jurisdiction is outside the scope).

2. Jurisdiction for civil disputes is essential because it is exercised by following due process[1136], which restricts the authority of courts within territorial limits of its established country[1137]. An attempt to extend this authority beyond territorial limits becomes an illegitimate assumption of power (see-6.2.3). International treaties bind state courts, not to abuse their authority[1138].

2. Jurisdiction for digital or traditional communication

1. Digital communication, which is global, can be civil or criminal. Whereas national laws are limited, so they become incompatible. This dilemma contributes to an 'online environment chequered with different regulatory schemes' thereby, creating legal uncertainty. Online communication needs a predictable legal environment when confronted with legal issues[1139]. These networks have reinforced the importance of correct jurisdiction because of its convulsive nature[1140].

[1135] Francis, D., & Roberts, A., (2006), 'The Emerging Recognition of Universal Civil Jurisdiction', Am. J. Int'l L., Vol 100, pp 142.
[1136] Michaels, R., (2017), 'Jurisdiction, Foundation', Elgar Encyclopedia of Private International Law, pp 28.
[1137] Maier, C., (2016), 'Within Borders: Territories of Power, Wealth, and Belonging since 1500' (Harvard Uni Press, US), pp 72-75.
[1138] *Pennoyer v Neff* [1878] 95 US 714; an example of such treaties could be Brussels Convention [1986] on jurisdiction and the enforcement of judgments in civil and commercial matters.
[1139] Salisbury, B., (2016), 'Who Rules the Net: Internet Governance and Jurisdiction' https://www.suffolk.edu/documents/jhtl_book_reviews/Salisbury04.pdf [Assessed 11th November 2017].
[1140] Shaw, R.S., (2017), 'There is no silver bullet: solutions to Internet jurisdiction', International Journal of Law and Information Technology, Vol 25, Issue 4, pp 283-308.

2. In traditional law, the existence of jurisdiction depends upon 'forum conveniens test', because of unconstitutional discretions available for courts (see-2.7.2, 2.17.1, 6.9.1.2). It varies on a case-by-case analysis because it helps maintain the standards of justice; however, it reduces judicial predictability and certainty because individual cases have different facts.

3. Jurisdiction for social or print media

1. As compared to print media, social media provides 'freedom of communication', which play a role in political order[1141]; 'Arab Spring[1142],' 'weaponising' of cyberspace, the Sony hack, the WikiLeaks, Obama campaign 2012 and Trump's presidential election campaign[1143]. Every day, Facebook users alone watch nearly 10 billion videos and upload 300 million photos. Every day, 15,000 new blogs appear[1144]. The numbers are incomprehensibly large and getting larger at exponential rates of growth[1145].

2. Social media is a 'non-territorial market', there may no longer be wearing over physical territory itself. In international legal order, there is no separate framework for the internet; therefore, jurisdiction becomes even more important to maintain sovereignty principles (see-2.1). It may not be easy to attain legal predictability in social media cases because of varying facts.

Nevertheless, application of jurisdiction for social media libel depends upon the territorial factors, the place of tort and private international law rules.

[1141] Bode, L., Vraga, E. K., Borah, P., & Shah, D. V., (2014), 'A new space for political behaviour: Political social networking and its democratic consequences', Journal of Computer-Mediated Communication, Vol 19, pp 414–429.

[1142] Wolfsfeld, G., Segev, E., & Sheafer, T., (2013), 'Social media and the Arab Spring: Politics comes first', The International Journal of Press/Politics, Vol 18, Issue 2, pp 115-137; it began with protests against police corruption, violence and intimidation. Later extremist utilised social media to derive power, legitimacy and popularity, from dispensing a form of justice in areas where the state is no longer doing so effectively, or where justice is perceived to be partial or connected to political, religious, or ethnic divisions.

[1143] Boulianne, S., (2015), 'Social media use and participation: A meta-analysis of current research', Information, Communication & Society (ASA), Vol 18, Issue 5, pp 524-538.

[1144] Zephoria (2018), 'Live stats'; https://zephoria.com/top-15-valuable-facebook-statistics/ [Assessed 18th March 2018].

[1145] Post, D.G., (2017), 'How the Internet is making jurisdiction sexy (again)', International Journal of Law and Information Technology, Vol 25, Issue 4, pp 249-258.

6.4.1.: Territorial factors:

The 'territoriality principle' determines jurisdiction in public international law, whereas 'location' determines jurisdiction under private international law (see-2.8.3). This location can be associated with either the location of the defendant, location of the tort, location of contractual agreement or performance, location of registration of the patent or trademark, and location of the server[1146]. For libel, the location of tort should be the base to assume jurisdiction, whereas, the courts are concerned with where is the defendant domiciled or where the tort initiated[1147]. It is not uncommon for an internet dispute to involve users in State A, who commit a wrong via the Internet, causing effects in State B, with the services and company incorporated in State C. Potential overlaps and conflicts with these territorial criteria demonstrate the difficulty in applying laws to cyberspace. However, under private international law, any state can use its legislative, judicial, and executive power, to regulate online transactions. Therefore, if a social media dispute is not exclusive to domestic disputes, a national court's jurisdiction can be related to the following three aspects[1148] (see-6.6.1):

1. Regulatory power of a state (to prescribe and enforce laws)
2. The physical territory of the state
3. The right to assume and to resolve transnational disputes (to adjudicate)

Under CPR, jurisdiction is based on physical location, which can complicate the determinations of jurisdiction. There can be many physical locations in a libel claim involving the locations of litigants, servers, content providers and the registrars or registries through which a domain name is registered. This section suggests that the denominator of jurisdiction should be the location the 'place of tort' and it should be used as a standard.

[1146] Svantesson, D., (2017), 'Private International Law and Internet' (3rd Ed, Wolters Kluwer, UK), pp 6.
[1147] Guillermo, W., (2015), 'Rules for Offline & Online in Determining Internet Jurisdiction: Global Overview & Colombian cases, International Law, Revista Colombian de Derecho Internacional, Vol 26, pp 13-62.
[1148] Kohl, U., (2010), 'Jurisdiction & the Internet Regulatory Competence over online Activity' (2nd Ed, Cambridge Book Online), pp 65, 122, 165.

6.4.2.: Place of Tort:

If the place of tort identifies the jurisdiction of a court, then the location of the claimant determines where he can bring a libel case[1149]. This location can be of the parties involved, conduct, or torts[1150]. The 2013 Act adopted the approach to understanding the sequence of events constituting tort[1151]. The tort can be of different types. Therefore, it is vital to understand 'cause of action', so the appropriate law could be applied[1152]. This is called 'substance test', which is flexible enough to take account of a number of factors:

1. The nature of the tort alleged to have been committed (defamation or libel)
2. Its material elements to determine the place of commission of tort (see-4.3.2)

Application of law becomes more natural if a judge applies its domestic laws; however, it is only possible if applicable law and jurisdiction coincide[1153]. On the contrary, if for every libel claim, the law of the state, with which the issue is closely related, is applied instead of place where wrong was committed and place where the claim is brought, it will reduce the importance attached to the place of tort and then subsequently place of publication[1154]. This would be a one-step short of adopting a proper law doctrine of tort for libel because courts may not have to identify applicable law. It may save the time in evaluating 'substance test', but it will reduce the importance of 'forum test[1155]' because the applicability of foreign law is a powerful factor in favour of forum non-conveniens dismissal (see-2.17.1).

[1149] *Bolagsupplysningen OU v Svensk Handel AB* [2017] (C-194/16); Jurisdiction lies either where the defendant is domiciled or where the harm occurred i.e. the location of defendant is where the claimant bring claim.
[1150] Article 5 (3) of the Brussels I Regulation defines the place where the tort was committed is the place where the infringer/defendant is established/domiciled or has permanent residence.
[1151] *S & W Berisford plc v New Hampshire Insurance Co* [1990] 3 W.L.R 688; once the court asserts its jurisdiction, it still have to apply choice of law rules to find the applicable body of substantive law; *Arkwright Mutual Insurance v Byanston Insurance* [1990] 3 W.L.R 705; if jurisdiction is assumed under the Brussels Convention, the doctrine of forum non conveniens will have no application in England.
[1152] The place of tort will also help to determine the choice of law, which is important to identify applicable law.
[1153] If the series of events occurred in England and the claim is also brought here, it would be highly unlikely that another country would have a closer and more real connection with the occurrence and the parties.
[1154] Carter, J., (1981), 'Torts in English Private International Law', Vol 52, Issue 9, B.Y.B.I.L., pp 24.
[1155] *Voth v Manildra flour Mills Pty Ltd* [1990] 171 CLR 538; even after assuming personal jurisdiction an English court decline jurisdiction because there may be another appropriate forum available.

There are circumstances, when judges can apply the domestic laws, without any substance test (only when both defendant and claimant are within one country). For instance, if *lex loci delicti* and the *lex fori*[1156] coincide, the defamation will be committed in the forum. The court will apply its domestic law, even though the parties are foreign citizens resident and domiciled abroad[1157]. Therefore, if a libel is committed in England (both defendant and claimant are domiciled in England), then place of tort and action will be within England and judge will apply the Defamation 2013 Act.

6.4.3.: Private international law:

Every sovereign state has developed its system of private international law (see-4.1). These rules may be regarded as procedural rules, both technical and formal, and do not concern themselves with the substance of a dispute (see-4.2.2).

Cross-border online interactions have the potential to expose internet users to any number of foreign legal systems[1158]. Private international law rules are relevant to defamation harms when content crosses geographical borders that are the rule in the world of the borderless internet[1159], transient populations, and offshore servers (see-2.3.2). (Private international law is detailed in Chapter 4).

6.5.: The importance of jurisdiction in social media libel:

Jurisdiction describes the geographical area of the courts[1160] and identifies the legal authority, which may have the power to decide a particular case[1161]. The case of Pinner[1162] defined that, "jurisdiction is the power of the court to deal with a matter in

[1156] Place where the action is being brought - the *lex fori*.
[1157] *Szalamay-Stacho v Fink* [1947] K.B. 1; English law applies in respect of wrongs committed in England.
[1158] Linarelli, J., (2016), 'Toward a Political Theory for Private International Law', Duke J Comp & Int Law, Vol 26, pp 299-336.
[1159] Berman, P. S., (2002), 'The Globalization of Jurisdiction', University of Panselvenia Law Review, Vol 151, pp 131.
[1160] Campbell, B., (1990), 'Black's Law Dictionary' (6th Ed, West publishing co, US), pp 853 - jurisdiction is a term of comprehensive import embracing every kind of judicial action.
[1161] Wang, F., (2010), 'Internet Jurisdiction', (Cambridge University Press, UK), pp 2; the location of the court which determines online libe can make a great deal of difference. For instance, this foreign location may be inconvenient to instruct lawyers in an unfamiliar country. Similarly, availability of all witnesses to attend trial in another country.
[1162] *Pinner v Pinner* [1977] 33NC App 204, 234 SE2nd 633.

controversy and pre-supposes the pre-existence of a duly constituted court with control over the subject matter and the parties involved in the dispute[1163]".

There are various reasons which validate the importance of jurisdiction in cyberspace disputes:

1. Lack of confidence: cyberspace cases may have effects in almost all the continents – however, the west may not trust the east judiciary system[1164]
2. The claimant may want the case to be heard in his home courts
3. It can minimise the claimant's part expenses for being in local system[1165]
4. It reduces the possibility of forum shopping
5. Applicable law: choice of forum determines the competence of a court which then decides the choice of law and appropriate law

6.5.1.: The importance of competent jurisdiction:

If a libel claim is brought in a wrong court, which does not have proper jurisdiction, it will provide the defendant with an opportunity to challenge the jurisdiction (see-2.13.2). The defendant had to prove that the court is incompetent to try the case and if the proceedings continued, it might cause grave danger to the ends of delivering justice[1166] (see-6.8.2.1).

The defendant has a right to fair trial[1167] hence, he can object to the competence of the court and challenge the court's decision (see-6.8). Nevertheless, in the circumstances where: (1) the court takes all the reasonable steps in assuming the jurisdiction and (2) the defendant did not contest jurisdiction at the start of the trial. The court's decision cannot be challenged on the grounds of jurisdiction after the case is decided[1168].

[1163] Rosenoer, J., (1997), 'Cyber-Law: The Law of Internet', (1st Ed, Springer-Verlag, NY), pp 227.
[1164] Because of the irregular cyber-laws or no laws at all.
[1165] Although, it may increase the cost for the defendants but claimant is the victim party.
[1166] WPP Holdings Italy SRL v Benatti [2008] Lloyd's Rep Plus 20.
[1167] Art 6(1) ECHR (European Convention 1950) for the Protection of Human Rights and Fundamental Freedoms, 213 UNTS 221.
[1168] *Burger King Corp v Rudzewics* [1985] 471 U.S. 462; the court concluded that the defendants purposefully availed themselves to the forum state and were, therefore, subject to jurisdiction there. The court reasoned that defendants should have reasonably anticipated being summoned into court in Florida for breach of contract.

Stevens J[1169] also reinforced this idea that if a defendant has fair warning about jurisdiction, he cannot challenge jurisdiction afterwards. It is obvious that if a court does not have proper jurisdiction it has to dismiss the case at the defendant's request. Once the court decides a case, the defendant will rescind the right to challenge the court's jurisdiction[1170]. However, the *Burnham*[1171] case, established that the judgment of a court lacking personal jurisdiction will be void because it did not provide a fair trial to the defendant (see-6.8)

The importance of appropriate jurisdiction was also elaborated in the Hutton[1172] case as:

1. It prevents forum shopping but also serves many other purposes
2. It allows the defendant to defend himself in a place where he has a most suitable connection
3. It ensures that the locality is most interested in the outcome of the case

6.5.2.: The importance of choice of forum:

The litigants prefer to start a claim in their own country's judicial systems (see 2.7.2). However, lack of agreement on jurisdiction means that online users may have to face the possibility of being sued in any foreign legal jurisdiction, wherever their comments are accessible[1173]. To avoid global litigation, the parties should include a choice of forum clause in their cyberspace transactions[1174]. (Inclusion of choice of forum may not be appropriate for social media libel because it depends on the harm suffered at a particular location[1175]). As far as choice of forum and choice of law clauses are concerned, they do not provide the automatic right of jurisdiction to the chosen court

[1169] *Shaffer v Heitner* [1997] 435 U.S. 186.
[1170] Freeman, E. H., (1999), 'Internet Jurisdiction: Issues of Jurisdiction in Cyberspace', Information Systems Security, Vol 7, Issue 4, pp 20-24.
[1171] *Burnham v Superior Court* [1990] 495 U.S. 604.
[1172] *EF Hutton & Co (London) Ltd v Mofarrij* [1989] 1 WLR 488 (CA).
[1173] *Pez Hejduk v Energie Agentur NRW GmbH* [2015] Case C−441/13; Regulation (EC) No 44/2001 – Article 5(3) (it is more specific for copyright however can be interpreted for defamation as well).
[1174] Bygrave, L., & Svantesson, D., (2001), 'Jurisdictional Issues and Consumer Protection in Cyberspace: The View from 'Down Under'', Conference on Cyberspace Regulation: e-commerce and Content, Sydney, Vol 24.
[1175] Zaphiriou, G. A., (1977), 'Choice of Forum and Choice of Law Clauses in International Commercial Agreements', Int'l Trade LJ, Vol 3, pp 311.

unless it reflects Art 3[1176] (it applies to contract only). In the Sonatrach[1177] case, the court rejected the choice of forum clause because of its uncertainty and held that under common law a clause will only be upheld if it is identifiable for jurisdiction[1178].

If online communications involve a choice of forum clause favouring England, which is negotiated by both parties equally[1179], then England will have jurisdiction in that case. This dispute can be resolved in the English courts even though England may have no connection to that dispute at all. In the *Maritime*[1180] case, the contract negotiated in Paris between a French and Tunisian company for oil transport[1181]. It was decided that the English court was appropriate because there was a clause providing for arbitration in London. Similarly, in the *Folias*[1182] case, the court assumed jurisdiction in a contract between a French company and Swedish ship-owners because the contract contained a clause providing arbitration in London. However, it may not be directly relevant for social media libel because the users do not agree on a particular jurisdiction. It may be relevant to professional libel claims where companies or celebrities include 'choice of forum' clauses in their statements.

6.5.2.1: Justice versus choice clause:

Judges are duty bound to meet the ends of justice and reprieve the victims. The courts have to follow the 'choice of forum' or 'choice of law' clauses if they are fair to both the litigants[1183]. In the *Jong*[1184] case, court held that the exclusive jurisdiction clauses are not binding but only enforceable when justices require[1185]. However, if choice clauses add an insufficiently precise to be a valid choice of jurisdiction or violate the

[1176] Art 3 of The Rome-Convention1980 and Art3 of The Convention on the Law Applicable to Contractual-Obligations 1980.
[1177] *Sonatrach Petroleum Corp v Farrell International Ltd* [2002] 1 ALL ER 627.
[1178] *Premium Nafta Products Ltd v FWI Shipping Company Ltd* [2007] UKHL 40.
[1179] *Iran Continental Shelf Oil Co v IRI International Corp* [2002] CLC 372.
[1180] *Compagnie d'Armement Maritime SA v Compagnie Tunisienne de Navigation SA* [1971] AC 572.
[1181] http://www.justcite.com/Document/b2utnZmJmSaaa/compagnie-tunisienne-de-navigation-sa-v-compagnie-darmement-maritime [Assessed 2nd January 2017].
[1182] *Europe Atlantique Sud v Stockholms Rederiaktiebolag Svea (The Folias)* [1979] AC 685.
[1183] *Banco Santander v Metro Do Porto S.A.* [2016] EWCH 465 (Comm); Justice Blair established that the provisions of national law cannot be overridden by the addition of choice clause.
[1184] *Jong v HSBC Private Bank (Monaco) SA* [2014] EWHC 4165 (Ch.).
[1185] It is possible to stay the English proceedings against the English defendants as a matter of effective case management, rather than on jurisdictional grounds. In the case of *Pacific International Sport Clubs v Soccer Marketing International* [2009] EWHC 1389, at 115, the court only enforced the clause to avoid multiple proceedings.

process of delivering justice, it will be rejected[1186]. For instance, if a Pakistan national includes a choice of forum clause, in a religious dispute, it cannot be accepted. It is a common practice that the application of the law is much straightforward in England as compared to Asia[1187]. On the contrary, if a country wants to ensure the applicability of its mandatory rules, she may allow the personal jurisdiction to her courts[1188].

6.5.2.2.: Englands' perspective:

In England, justice is the deciding factor in recognising choice clauses[1189]. Traditional rules allow courts to exercise jurisdiction and reject forum clause if the claimant can prove that justice may not be obtained in that forum. CA[1190] established that the jurisdictional clause could not be relied on because political and legal changes in Angola may deny justice to the claimant. However, in the absence of arbitration clause, courts require a connection with England to start proceedings i.e. an explicit jurisdictional base is required[1191]. In social media libel, the connection with England need not be particularly strong and even a weaker link suffices for courts to assume jurisdiction (see-2.3.1.2). Besides, the question arises whether litigants should be free to decide jurisdiction, most favourable to their case[1192]. However, international courts allow clauses in favour of English jurisdiction because they have efficient conduct of the proceedings. Lord Scott[1193] noted that the English court can efficiently determine the issues involving external factors, upon which its decision is sought. It is detailed in the overview of English jurisdiction section.

[1186] *Marzillier, Dr Meier and Dr Guntner mbH v AMT Futures Ltd* [2015] EWCA Civ 143; the clauses must attach special significance to any causal connection between the place where damage occurs and the attribution of jurisdiction.
[1187] Hook, M., (2017), 'The choice of law agreement as a reason for exercising jurisdiction', The International and Comparative Law Quarterly, Vol 63, Issue 4, pp 963-975.
[1188] By providing that parties cannot opt out of this jurisdiction through a choice of court agreement.
[1189] Graveson, R. R., (1951), 'Choice of Law and Choice of Jurisdiction in the English Conflict of Laws', British Year Book of International Law, Vol 28, pp 273-290.
[1190] *Carvalho v Hull Blyth* [1979] 3 ALL ER 280.
[1191] The Brussels I Regulation, refrain courts to disregard a 'choice of forum' agreement in order to protect mandatory rules unless an explicit jurisdictional base can be established.
[1192] Hayward, R., (1999), 'Conflict of Laws', (3rd Ed, Cavendish Publishing, London), pp 1.
[1193] *Tehrani v Secretary of State for the Home Department* [2006] UKHL 47 at [66].

Chapter 6

Part C

Overview of English Jurisdiction

English law is divided into two broad categories of conflict law: (1) private international law and (2) public international law. Private international law remains a part of the domestic law as long as there is no foreign element involved (see-2.8.2). In cyberspace defamation, if there is no foreign element involved, then the courts would apply the appropriate English domestic law (see-6.4.2). The involvement of foreign elements makes the courts to implement choice of law rules using private international law, which has been used to determine the issues with a cross-border element[1194]. The examination of jurisdiction and choice of law is the integral elements to trace the various stages of online libel[1195]. Court has to analyse if the litigants have a link with England and can they sue or be sued in English courts[1196] because to assume personal jurisdiction a real and substantive connection with the state is required[1197]. These guidelines are codified in CPR.

6.6.: CPR – Considerations:

Judges come across an increasing number of online libel cases, which may not solely confine to the jurisdiction of England[1198]. Traditional jurisdictional standard is based on 'good arguable case[1199]' (see-7.3). For instance, in the *Malik* [2016][1200] case, the court considered Mr Malik (US National) application to serve Mr Trump (US Presidential candidate), who was not resident in England. Master McCloud noted that the permission

[1194] Mills, A., (2008), 'The Private History of International Law', British Institute of International and Comparative Law, Vol 55, Issue 1, pp 1-50.
[1195] Hook, M., (2017), 'The choice of law agreement as a reason for exercising jurisdiction', The International and Comparative Law Quarterly, Vol 63, Issue 4, pp 963-975.
[1196] McLachlan, (2004), 'International Litigation and Reworking of Conflict of Law', L.Q.R., Vol 120, pp 580.
[1197] *Club Resorts v Van Breda* [2012] SCC 17; if a substantial connection cannot be established court must refuse jurisdiction.
[1198] *Kaefer Aislamientos v AMS Drilling Mexico SA* [2017] EWHC 2598; the question of whether the court had jurisdiction or not depended solely on whether there was a 'good arguable case'; *Brownlie v Four Seasons* [2017] UKSC 80; Lady Hale stated that the correct test was whether the foreign claimant had a 'good arguable case' against the foreign defendant.
[1199] *Williams v Central Bank of Nigeria* [2013] EWCA Civ 785, the CA allowed permission to serve a claim out of the jurisdiction, including consideration of the applicable jurisdictional gateway in PD6B because England was the appropriate forum.
[1200] *Kamran Malik v Donal Trump* [2016] EWHC QB.

to serve outside England could only be granted depending on 'good arguable case', which must fall within one of the jurisdictional gateways set out in CPR r3.1 (see-7.3). Mr Malik claimed that he could not sue Mr Trump in the US because of his constitutional rights. It did not provide a reasonable prospect of success in England[1201]. The court rejected the case because 'England was not the appropriate forum' under S9 (see-7.7). The claimant has the right to choose a jurisdiction to bring a claim (see-6.4.2). Once a claim is forwarded, a judge decides if the court has personal jurisdiction to hear this case[1202]. There are many factors, which affect the final decision, and this will depend on the circumstances of each case (see-6.2.1). Judges should balance all of these factors carefully and fairly, as this will weigh heavily on the evidence provided and whether it would be in the public interest to do so (especially for public figures) (see-2.16).

6.6.1.: General principles:

Jurisdiction can be divided into three broad categories[1203]:

1. The jurisdiction to prescribe (or 'legislative' jurisdiction)[1204]
2. The jurisdiction to adjudicate (or 'judicial' jurisdiction)[1205]
3. The jurisdiction to enforce (or 'enforcement' jurisdiction)[1206]

The exercise of the type of authority a court may assume depends on the merit of the claim[1207]. It is illustrated by following principles of methods, grounds and heads of establishing jurisdiction:

[1201] The court accepted that in the UK this case is actionable under the Defamation Act 2013, Equality Act 2010 and religious hatred Act 2006 because the defendant's defamatory statement affected Mr Malik being a Muslim.
[1202] Wolff, T. B., (2017), 'Choice of law and jurisdictional policy in the federal courts', University of Pennsylvania Law Review, Vol 165, Issue 7, pp 1847.
[1203] George, B., (1990), 'In Search of General Jurisdiction', Tulane Law Review, Vol 64, pp 1097.
[1204] It refers to the right of a state to make its law applicable to the activities that has taken (physically outside) – it deals with extra-territorial jurisdiction (outside the scope of this chapter).
[1205] It refers to the power of a state to require a defendant to appear before a court and defend a claim – in the UK it is based on service of writ.
[1206] It is more limited than adjudicative jurisdiction – only available if the defendant is legally served outside the forum state's jurisdiction, and he chooses not to enter at court hearings.
[1207] Kohl, U., (2010), 'Jurisdiction & the Internet Regulatory Competence over online Activity' (2nd Ed, Cambridge Book Online), pp 65, 122, 165; it depends if the claim is to enforce another court's judgment or the claimant is seeking a remedy.

6.6.1.1.: Methods of jurisdiction:

There are different methods, which allow a state to exercise its jurisdiction over a foreign defendant[1208]:

1. The territory - defendant is domiciled in claimants state
2. The Active personality - defendant will be prosecuted in the country of the nationality of the offender
3. The passive personality - defendant will be prosecuted in the country of the nationality of the victim
4. Universal jurisdiction - states can prosecute regardless of the nationality of litigants and location of offence

6.6.1.2.: Grounds of jurisdiction:

As far as the link to the forum is concerned, the jurisdiction may be justified in common law on five grounds[1209]:

1. Personal connection
2. Property connection
3. Subject matter connection
4. Consent
5. Collateral connection

6.6.1.3.: Heads of jurisdiction:

There are two heads of jurisdiction for damages and remedies as detailed in Article 5 (3) Brussels I: (1) 'the place of the act giving rise to damage' and (2) 'the place where the damage occurred'. The first head allows claimants to pursue full damage and other remedies, whereas, the second head is limited only to local damage in the Member State[1210].

[1208] Jurisdiction: Legal Guidance, Crown Prosecution Service; Available online https://www.cps.gov.uk/legal/h_to_k/jurisdiction/index.html [Assessed 5th October 2017].
[1209] Dicey, Morris & Collins, (2006), 'The Conflict of Laws', (14th Ed, Sweet & Maxwell, London), pp 305.
[1210] *Shevill and Others v Presse Alliance SA* [1996] HL 26.

6.6.2.: Definition and principles:

Jurisdiction means that the 'law' provides a court with the power to hear and determine a case[1211]. Diplock LJ[1212] defined that "jurisdiction is an expression which is used in a variety of senses and connotations, and takes its colour from its context". Jurisdictional rules will determine an appropriate forum because it is all about power[1213]. Judges decide whether social media users, who have a little link with England, may be able to sue or be sued in England; or English court has the authority to deal with the issues at all (see-2.6.2). The power of a court to decide a case is irrelevant of the activity[1214], whether it takes place online or in the real world, there would be no effect on the definition of jurisdiction".

6.6.2.1: Relevant principles:

Following are some important traditional jurisdictional principles which will form the base for analysing social media libel claims after the Defamation Act 2013 (see-7.1.2).

1. **Jurisdictional link:** English courts may still assume jurisdiction, if there is only a limited connection or the service takes place in England because the Laurie[1215] case, held that the writ to the defendant in England produced enough connection to England, albeit a tenuous one (see-2.3.1). Similarly, Lord Ackner[1216] held that the English court had jurisdiction over a Korean company, whose branch was operating in London. Even though that branch had no connection with the legal dispute - there are different rules for serving individual, corporation and partnerships (see-6.8.1.1). This case may not have succeeded in the EU, where a company must have a main office in the state to be prosecuted in that state[1217].

[1211] Briggs & Rees, (2005), 'Civil Jurisdiction and Judgments', (4th Ed, UK); Freeman, E. H., (1999), 'Issues of Jurisdiction in Cyberspace', Information Systems Security, Vol 7, Issue 4, pp 20-26.
[1212] *Anisnimic Ltd v Foreign Compensation Commission* [1967] 2 ALL ER 986 at 994.
[1213] Briggs, A., (2012), 'The subtle variety of jurisdiction agreements', Lloyd's Maritime & Commercial Law Quarterly, pp 364.
[1214] *Garthwaite v Garthwaite* [1964] CA, P 356.
[1215] *Laurie v Carroll* (1958) 98 CLR 310; the writ may be personally served on a person who is present within the jurisdiction.
[1216] *South India Shipping v Bank of Korea* [1985] 1 Lloyds Rep. 413.
[1217] Article 5(5) Brussels Regulation.

2. **Libel tourism:** London is known as the libel capital of the word[1218] because the courts can assume jurisdiction in a defamation claim brought be foreign claimant against a foreign defendant. This 'no connection jurisdiction' may give rise to forum shopping and libel tourism (see-2.17). However, such decisions are important to preserve the boundaries of justice, besides in the *South-Indian Shipping* case the claimant served the writ in England, which is the general rule to invoke personal jurisdiction of the English courts (CPR-r 6.3).

3. **Forum shopping:** If a claimant is pure forum shoppers, English judges may decline jurisdiction on the basis of natural forum (see-2.17.1). In the Michaels[1219] case, the court declined jurisdiction because the claimant had no legitimate reputation to defend in England[1220]. Even, if English court accepts jurisdiction, it can only compensate for the loss within jurisdiction, which will be minimal, because the number of online readers was very low. Besides, the applicable law is determined by 'choice of law', so the law of defendant's residence can be applied[1221].

4. **Choice of law:** The assumption of jurisdiction in social media libel would not give the English courts an automatic right to apply English domestic laws, because choice of law is the next step after assuming the jurisdiction (see-6.5.2). The choice of law would direct the courts as to whether the rules of English law or the foreign law with which that transaction has a connection is to be applied[1222]. For instance, in the Wildenstein[1223] case, after assuming jurisdiction the English court has to decide whether to apply the law of the forum (or French law). Hence, in social media libel, there is a possibility that English courts may also have to apply foreign law to solve that legal issue[1224].

5. **Foreign law:** Concerning foreign law, if the forum court just applies its domestic laws to cyberspace cases involving external elements, it may be a

[1218] Robertson & Nicol, (2008), 'Media Law', (5th Ed, Penguin Books, London), pp 93.
[1219] Lord Steyn declined to discuss specific issues arising out of the publication of the offending magazine via the Internet, suggesting that there had been insufficient evidence before the court to enable the issue to be considered adequately.
[1220] *Berezovsky v Michaels* [2000] 2 All ER 986.
[1221] *Calder v Jones* [1984] 465 U.S. 783.
[1222] *Kolden Holdings Ltd v Rodette Commerce Ltd* [2008] 1 Lloyd's Rep 434.
[1223] *Maharanee of Baroda v Wildenstein* [1972] 2QB 283.
[1224] Dicey, Morris & Collins, (2006), 'The Conflict of Laws' (14th Ed, Sweet & Maxwell, London), pp 305.

breach of international law[1225] (see-6.5.1 and 6.8). In situations where English law is also the proper law, then the English domestic law of that particular subject matter (libel) will be applied. However, applying defamation laws to social media libel generates practical difficulties because of the varying standards of defamation.

6.6.3.: Practical difficulties of traditional principles:

Continental jurists have intensively studied private international law since the 13th century and that the first rule of English conflict of laws is traced back to the late 17th century[1226]. Tensions arise when this field of law confronts the amorphous 'territory' of the internet. This may be due to the relatively recent emergence of social media as the standard medium of communication and dissemination, or perhaps, the fact that PIL has undergone significant changes in the past decade (see-4.2). It is still in a relative state of flux and quite possibly conflicts experts prefer to observe evolutions[1227] (legislative and jurisprudential) and wait for the legal landscape to take on a more definite shape before proffering opinions[1228] on how the adapted (or new) conflicts frameworks might be applied to the online world of social media (see-4.2.2).

The challenge for conflicts lawyers is to apply rules and policies formulated for a material world in a non-material environment (see-9.1.1). This non-material environment does not comprise sovereign states or clear jurisdictional borders - the traditional 'landscape' where conflicting issues are played out[1229]. Many sovereign states comprise separate jurisdictions, such as the UK have English, Walsh, Scottish, and Irish jurisdictions. Other countries, which are divided into numerous jurisdictions, each with its distinct legal system, include the US, Canada, India and Australia (see-1.6). Lord Collins[1230] argued that it has not been easy for the conflict of laws to adapt

[1225] *Midland Bank Plc v Laker Airways Ltd* [1986] Q.B. 282.
[1226] Lord Collins of Mapesbury (2012), 'The Conflict of Laws' in Dicey, Collins and Morris (eds.), Vol 1 (15th Ed, Sweet & Maxwell), pp 9.
[1227] Friedrich, S., William, G., (1989), 'Private International Law. A Treatise on the Conflict of Laws: A Treatise on the Conflict of Laws', (T&T Publisher, Oxford), Ch. 1: The Limits of its Operation in Respect of Place and Time.
[1228] Hoffheimer, M.H., (2016), 'Conflict of Laws: Examples and Explanations', (3rd Ed, Wolters Kluwer, US), Ch. 3; Personal Jurisdiction: Costitutional Foundations and Traditional Basis.
[1229] Schultz, T., (2008), 'Carving up the Internet: jurisdiction, legal orders, and the private/public international law interface', European Journal of International Law, Vol 19, Issue 4, pp 799–839.
[1230] Lord Collins of Mapesbury (2012), 'The Conflict of Laws' in Dicey, Collins and Morris (eds.), Vol 1 (15th Ed, Sweet & Maxwell), pp 10.

itself to the changes in social and commercial life, which the 20th century has witnessed. Many of its rules were laid down in the 19th century and seemed better suited to 19th century conditions then to those of the 20th century. By logical extension, PIL's adaptation to a border-disregarding internet would be fraught with even greater difficulties (see-1.5). These difficulties are evaluated in the structure of jurisdiction part.

Chapter 6

Part D

Structure of English Jurisdiction

There are two types of claims, which may be commenced in English courts: 'Claims in personam', and 'admiralty claims in rem'. The personam claims involve the claimant who seeks a judgment, which required the defendant to pay money or refrain from doing something, while admiralty claims are directed against property[1231] (a ship, cargo or aircraft). There are several sets of rules for determining the English jurisdiction, including, 'Brussels I Regulations', 'Modified EU Rules', and 'Traditional Rules[1232].

The action in personam deals with the personal disputes between two parties. English rules relating to the actions in personam are purely procedural because anyone who can serve a claim form to the defendant can invoke the jurisdiction[1233]. The question of whether the court exercises its authority depends on the CPR principles. The court will have jurisdiction to entertain a petition if the defendant is served a writ in the manner prescribed by CPR (see-2.11.6). The claims related to civil or commercial matters, which fall within the meaning of Council Regulation EC 44/2001,[1234] or the Brussels Convention 1968, the court has to decide the claims per EU regulations, judgments[1235] and conventions[1236]. It is essential to discuss the EU rules because they supersede traditional British rules in the cases, which are within its scope[1237]. However, England may attain a different framework after completion of Brexit in 2019[1238].

6.7.: Brussels-Regulations:

In comparison to traditional rules, English court cannot assume jurisdiction over an EU-domiciled defendant despite the service of claim form because the action must be

[1231] Senior Courts Act 1981, Section 21(5)
[1232] Traditional Rules also reflect in the Common Law Procedure Act 1852 and Judicature Acts 1873.
[1233] Fawcett & Carruthers, (2010), 'Private International Law' (14th Ed, Oxford University Press), pp 353.
[1234] Council Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters EC 44/2001.
[1235] The Judgment Regulation [2001] as amended in 2003
[1236] Lugano Convention 1982 Act, Sch 3C.
[1237] Fentiman, R., (2010), 'International Commercial Litigation', (1st Ed, Oxford University Press), pp 8.
[1238] Ahmed, M., & Beaumont, P., (2017), 'Exclusive choice of court agreements: Some issues on the Hague convention on choice of court agreements and its relationship with the Brussels I recast especially anti-suit injunctions, concurrent proceedings and the implications of BREXIT, Journal of Private International Law, Vol 13, Issue 2, pp 386.

brought in the court of the country where the defendant is domiciled[1239]. Hence, EU-regulations only allow English courts to assume jurisdiction if the defendant is domiciled in England. Regardless of appropriate jurisdiction, the doctrine of 'forum non convenience' will have no application[1240] in cases involving EU nationals.

Similarly, there is further confusion over the nationals who are non-EU, but their countries have adopted Brussel Regulations (Switzerland is not in the EU but it is a part of the EEA). There are many non-EU countries which are a signatory of the Lugano Convention. This can cause adverse effects on non-contracting nations because online libel may involve various defendants of different nationalities. The Queen's Bench[1241] established that Article 2[1242] is mandatory even though the competing forum was a non-contracting forum. Similarly, the claimant's position is further compromised because they may have to bear extra cost, logistic issues and availablility of legal aid in other forum. However, the CA[1243] overruled 'Berisford[1244]' and 'Arkwright[1245]' principles, by concluding that forum non-convenience test can be applied to contracting-state nationals if it is consistent with Brussels-Convention[1246]. It shows that the application of the EU-regulation may cause uncertainty considering the complex nature of social media libel as Clarkson[1247] pointed, 'it is unfortunate that Member States have not amended the Brussels regime for the resolution of online jurisdictional disputes'. Nevertheless, according to Article 1[1248], matters other than civil and commercial dispute will be dealt with under traditional rules[1249]. This thesis will only focus on libel, which is part of civil and commercial disputes.

[1239] Art 2, Brussels Convention 1968.
[1240] *S and W Berisford Plc v New Hampshire Insurance Co* [1990] 2 QB 631.
[1241] *Arkwright Mutual Insurance v Bryanston Insurance* [1990] 2 QB 649.
[1242] Art 2, Brussels Convention 1968.
[1243] *Re Harrods (Buenos Aires) Ltd* [1991] 4 ALL ER 334.
[1244] *Berisford Plc v New Hampshire Insurance Co* [1990] 3 W.L.R.
[1245] *Arkwright v Bryanston* [1990] 2 QB 649.
[1246] Fentiman, R. G., (1993), 'Jurisdiction, Discretion and the Brussels Convention', Cornell Int'l LJ, Vol 26, pp 59; English court has the authority to stay, dismiss or decline proceedings in which it assumed jurisdiction under Brussels Convention 1968.
[1247] Clarkson & Hill, (2011), 'The Conflict of Laws', (4th Ed, Oxford University Press), pp 134.
[1248] Art 1, Luxembourg Protocol 1971.
[1249] Art 1 clearly states that Brussels Convention and Brussels regulations are limited to only civil and commercial matters, irrespective to the nature of the nature of the court.

6.7.1.: English jurisdiction versus EU's:

In its preliminary ruling, the European Court of Justice[1250] ordered English courts to decline jurisdiction over EU members. Such rulings have been criticised by British authors, lawyers and judges on several occasions[1251]. The reaction in England[1252] to the controversial ruling by the ECJ to decline jurisdictions over EU domiciled defendants in the cases of *Erich* 2003, *Turner* 2004 and *Jackson* 2005[1253] reveal that the EU regulations may have adverse effects[1254]. This situation of assuming jurisdiction considering EU and traditional rules may become tangled if applied to social media libel because (see-2.10.1):

1. Social media users may have multiple nationalities
2. Libel may be actionable per se in many jurisdictions at the same time
3. Libel victim may suffer harm in many different states, including the UK and EU[1255]

Parallel application of both EU and English rules may lead to further conflicts[1256] because the courts might be pre-occupied in establishing a relationship between the two systems[1257]. It is necessary to understand a clear distinction in the application of these two regimes. Traditional rules increase the possibility of allowing the start of proceedings in England because it is based on the defendant's presence in England (see-2.11.6). CPR r6.9 states that this assumption is for non-EU domiciled i.e. if a social media user who is an EU national commits a tort of defamation then the Brussels rules should be applied to assume the jurisdiction. However, for non-EU domiciled

[1250] *Eric Gasser GmBH v Misat Srl* [2003] E.C.R. 1-14693.
[1251] *Turner v Grovit* [2004] E.C.R. 1-3565.
[1252] Fentiman, R., (2010), 'International Commercial Litigation', (1st Ed, Oxford University Press), Para 11.05.
[1253] *Owusu v Jackson* [2005] ECR I – 1383.
[1254] Jonathan, H., (2008), 'The Brussels I Regulation and the Re-Emergence of the English Common Law', The European Legal Forum, Vol 4, pp 181 – 189.
[1255] Collins, L., (2006), 'Diecy, Morris & Collins the Conflict of Laws' (14th Ed, Sweet & Maxwell, London), Vol 1, Part 3, Ch. 11 in Jurisdiction and Foreign Judgments.
[1256] Both regimes are at root concerned with the same objectives, but give effect to that concern in different ways. In English law the mechanism is discretionary, but in Regulation and Convention a simple chronological approach is adopted as the only alternative to a discretionary approach; Fentiman, (2006), 'Civil Jurisdiction and Third States: Owusu and After', CML Review, Vol 43, pp 705-732.
[1257] Ahmed, M., & Beaumont, P., (2017), 'Exclusive choice of court agreements: Some issues on the Hague convention on choice of court agreements and its relationship with the Brussels I recast especially anti-suit injunctions, concurrent proceedings and the implications of BREXIT, Journal of Private International Law, Vol 13, Issue 2, pp 386.

defendants, the English court has discretion whether or not to exercise its jurisdiction[1258]. (Non-EU defendants and traditional rules are the subject matter of this research).

6.8.: Application of traditional jurisdiction:

English courts must analyse the interests of the involving parties and investigate all the relevant aspects to find out whether it is the appropriate forum to adjudicate (see-4.7). Regardless, of an appropriate forum, if justice cannot be done in another forum, the English court would hear the case[1259] (see-7.19). In the *Tiernan*[1260] case, the court assumed jurisdiction to serve the best interests of the parties. On the other hand, English courts may not assume jurisdiction if there are countervailing factors, which suggest that it should decline jurisdiction in favour of another forum[1261]. Jurisdictional rules only decide where litigation is to take place rather than whether it can take place at all[1262].

The right to a fair trial is central to the British justice system and is enshrined in Article 6[1263] of the European Convention[1264]. The English court also should not assume jurisdiction if it violates fundamental human rights or breaches the right to a fair trial (see-6.5.1). The assumption of jurisdiction must also be considered in the light of the Human Rights Act 1998[1265]. In the *Lubbe*[1266] case, it was argued that if the English court stayed the proceedings, it would be a breach of Article 6 on the right of a fair trial. Lord Bingham concluded that Art 6 would not affect the already reached a conclusion (see-7.6, 7.19).

[1258] *Spiliada Maritime v Cansulex Ltd* [1987] AC 460.
[1259] *Irish Shipping Ltd v Commercial Union Assurance Co Plc* [1991] 2 QB 206.
[1260] *Tiernan v Magen Insurance Co Ltd* [2000] ILPr 517.
[1261] Lorenzen, G., (1943), 'The Logical and Legal Bases of the Conflict of Laws', The Yale Law Journal, Vol 52, Issue 3, pp 680-683.
[1262] Cook, W., (1942), 'Logical and Legal Bases of the Conflict of Laws' (Harvard University Press, Cambridge), Ch. 1 – 3.
[1263] everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
[1264] It was ratified by the UK in 1951 and brought directly into British Law by the Human Rights Act 1998 – it has however been abolished since the voting for Brexit.
[1265] Human Rights Act 1998; it implements the European Convention on Human Rights (ECHR) 1950.
[1266] *Lubbe v Cape Plc* [2000] 1 WLR 1545, at 1561.

Article 6 protects the right to a public hearing before an impartial court of law but it cannot be used as an instrument to escape from the application of the law[1267]. Atkins J[1268] noted that Article 6 is silent where that right has to be capable of being exercised. For instance, if a Pakistani user violates online security, he cannot argue on Article 6 that he may have a fair trial in Pakistan rather than England. Nevertheless, in the case of social media libel claims the place of tort will be of utmost importance (see-6.4.2). The court can balance Article 6 rights by following the due process (See-4.2, 6.9). A court becomes competent to try an action in personam[1269] if the defendant is served in England and he submits to the jurisdiction or the claim-form is served out of the jurisdiction under CPR r 6.20[1270].

6.8.1.: Defendant present in the UK:

If an EU national is domiciled in England, he will be subject to the Brussels I Regulation (see-2.7.1). If a non-EU defendant is domiciled in England, the courts will have by default jurisdiction under CPR; however, Section 9 of the 2013 Act has complicated the standard (see-7.7). The mere presence of a non-EU defendant will not invoke English jurisdiction, the courts can only assume jurisdiction if the claim form is served on the defendant in England (see-2.11.6.3). The application of rules depends on the type of defendant.

6.8.1.1.: Types of social media defendants:

The defendant may be an individual, a person either linked to a corporation or may represent a partnership. It is important to differentiate among different defendants because there are different principles depending on the type of the defendant[1271].

1. **Individuals:** As far as the presence is concerned, HL[1272] established that the English court would have jurisdiction if the defendant happens to be physically

[1267] Clarkson & Hill, (2011), 'The Conflict of Laws' (4th edition, Oxford University Press), pp 60.
[1268] *The Kribi* [2001] 1 Lloyd's Rep 76 at 87.
[1269] Clarkson & Hill, (2011), 'The Conflict of Laws' (4th Ed, Oxford University Press), pp 103.
[1270] Fawcett & Carruthers, (2010), Private International Law (14th Ed, Oxford University Press), pp 354.
[1271] http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part06 [Assessed 22nd December 2017].
[1272] *John Russell & Co Ltd v Cayzer, Irvine & Co Ltd* [1916] 2 AC 298 at HL.

present in England at the time of service. Under CPR r 6.5 (6)[1273], only a personal service is acceptable because service by post is no longer satisfactory within jurisdiction. In the *Wildenstein*[1274] case, the court assumed jurisdiction, even though the contract was made in France because the writ was served on the defendant in England. A passage through English airport, a visit or transit will all suffice for physical presence as long as the procedure of the service is followed (see-2.3.1). Therefore, a defendant cannot argue that his stay in England was brief because in the *Colt*[1275] case, the court assumed jurisdiction even though the defendant was staying in London only for one night[1276].

The defendant must come to England by his free will without the involvement of misstatement or fraudulent trick. Lyell J[1277] noted, "there must be the absence of fraud inducing the defendant to enter the jurisdiction". The service will not be valid if there was element of fraudulent inducement. Lord Davey[1278] established that if the defendant is tricked by fraud to come to the forum, the common law rule would not apply. Hence, regardless of permissible method of service, the traditional physical presence rule will not be applicable if the writ was served fraudulently[1279].

Multiple-defendants: In social media libel, there may be multiple defendants involved in the same publication. It will be straightforward to serve them if all the defendants are based in one jurisdiction. If these defendants are based at multiple locations, then the 'necessary or proper party' gateway can be used[1280]. It often proves useful in multi-party claims. If one of the defendants, who can be served within England, or with permission under another of the gateways and against whom there is a real issue to be tried, then the court will allow the claim to be served on other parties outside the jurisdiction[1281]. However, the claimant

[1273] CPR PD 6B, Section 4, Part 6**,** explains the methods of proper service of a claim form.
[1274] *Maharanee of Baroda v Wildenstein* [1972] 2QB 283.
[1275] *Colt Industries Inc v Sarlie (no 1)* [1996] 1 ALL ER 673.
[1276] Fawcett & Carruthers, (2010), Private International Law (14th Ed, Oxford University Press), pp 355.
[1277] *Colt Industries Inc v Sarlie (no 1)* [1996] 1 ALL ER 673.
[1278] *Watkins v North American Land & Timber Co Ltd* [1904] 20 TLR 534.
[1279] Rule of the Supreme Court, Order 10, Rule 1(1) and Order 65, Rule 2.
[1280] *(1) Mark McLaughlin (2) Greg Martin (3) Alan John (Jim) Davies v London Borough of Lambeth (2) Mohammed Khan*[2010] EWHC 2726 (QB).
[1281] *Standard Bank plc and others v Just Group LLC and others* [2014] EWHC 2687.

has to prove that the other defendants are necessary or proper parties to the libel case[1282].

2. **Corporations:** If a corporation is registered in England[1283], then the traditional rules will apply[1284]. Unless the corporation may be present in England without being domiciled there[1285] (it may not have a fixed place of business[1286]). Under the Companies Act 2006, a company will be classed as established in England if (a) it is registered in England[1287] (b) it is incorporated outside but has a business place in England[1288] or (c) it has a place of business in England[1289]. Similarly, in Brussels-Regulations,[1290] a company is domiciled where it has the main administration. S1139[1291] will allow the claimant to serve the writ if the defendant has any establishment because a company, which has a place of business in England, can be sued in England[1292].

3. **Partnership:** As far as partnerships are concerned the writ can be served to any of the partners who is presently in England[1293]. If the writ is served to the person who controls the firm, then by virtue of CPR r6.4 (5) the service would be deemed legally effective for all partners[1294] unless it was not the main place of business subject to the type of partnership i.e. General Partners, limited liability or LLP.

[1282] *AB Bank Limited v Abu Dhabi Commercial Bank PJSC* [2016] EWHC 2082.
[1283] Business disparagement is a claim suited for businesses looking to protect their financial rights and property, while defamation is geared towards protecting a person's reputation.
[1284] *Adams v Cape Industries Plc* [1990] Ch. 433.
[1285] *Dunlop Pneumatic Tyre v Vorm Cudell* [1902] 1 KB 342; hiring a stand during the a show, the defendants were carrying on business i.e. it is resident at a place within the jurisdiction, and therefore could be served there with a writ in an action by the claimant.
[1286] *La Bourgogne* [1872] L. R. 7 Q. B. 293; the true test in such cases is whether the foreign corporation is conducting its own business at some fixed place within the jurisdiction.
[1287] S725 Companies Act 1985; Ch. 6 http://www.legislation.gov.uk/ukpga/1985/6 [Assessed 22nd December 2017].
[1288] S691 Companies Act 1985; Ch. 6 http://www.legislation.gov.uk/ukpga/1985/6 [Assessed 27th December 2017].
[1289] S695 Companies Act 1985; Ch. 6 http://www.legislation.gov.uk/ukpga/1985/6 [Assessed 22nd December 2017].
[1290]http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_civil_matters/l33054_en.htm [Assessed 28th December 2017]
[1291] Section 1139 (2) Companies Act 2006.
[1292] Overseas Companies Regulation 2009, reg 7 (1).
[1293] *Lexi Holdings Plc v Luqman & Ors* [2009] EWCA Civ 117.
[1294] Service on a partnership, and all its partners, can be effected by ostal service on one of the partners.

4. **Registered partnership:** To serve a registered partnership in England, the claimant has to follow CPR r7.2 A and CPR PD7, which state that the partners must be sued in the name of their firm. The claimant has the option to serve both partners individually or the partnership as a whole. However, if the service was fraudulent or it was not proper service, then it will invalidate any jurisdiction over the partnership as well[1295]. If the defendant had an establishment/property in England, then according to the *Gasque*[1296] case, England would be its place of domicile. This establishment could sue or can be sued in England because CA[1297] established that a company was said to have established a place of business in England, if it carried on, part of its business activities there. The main place of establishment can receive claim form because the case of *Re-Oriel* [1986][1298] held that a specific location in England associated with the main business is required.

5. **Service of writ:** CPR r6.3-6.52 state that a claim form can be served to the main business of a partnership in England. The service of claim form will be effective even if the partners were not present in England at the time of service[1299]. In the *Clark*[1300] case, it was established that if one partner were served properly, then other partners would be deemed served on a similar issue. If both partners are sued for different issues, an individual process of service is required for establishing personal jurisdiction.

6.8.1.2.: After service:

Once the defendant has been served, whether in England or elsewhere, the defendant has two options, 'acknowledge and submit to English jurisdiction' or 'acknowledge the service and dispute the jurisdiction'. The defendant will have a short period in which to challenge the court's jurisdiction (see-6.8.2.1, 2.12).

[1295] As per Lord Diplock in *Amin Rashid v Kuwait Insurance* [1984] 1 AC 50 at 65G.
[1296] *Gasque v Inland Revenue Commissioners* [1940] KB 80.
[1297] *South India Shipping v Export-Import Bank of Korea* [1985] 2 ALL ER 219.
[1298] *Re Oriel* [1986] 1 WLR 1980.
[1299] *Kamali v City & Country Properties Ltd* [2006] EWCA Civ 1879; Wilson LJ held that the service had been completed even though the defendant was out of the jurisdiction, at the time of service.
[1300] *Lysaght Ltd v Clark & Co* [1891] 1 QB 552.

6.8.2.: Defendant Submits to the jurisdiction:

It can be express or implied.

1. **Express Submission:** CPR r 6.4 (2) state the example of expressly submitting to the courts' jurisdiction:

    1. The defendant defends the case
    2. The defendant challenges the liability
    3. A representative of the defendant accepts the service on behalf of the defendant

    In the *Bassam*[1301] case, the half-brother commenced proceedings in Saudi Arabia, the English court granted an injunction to the wife to restrain the proceedings because the half-brother had already submitted to English court's jurisdiction.

2. **Implied submission:** CPR r20.2. states that submission can be implied, for instance, the defendant brings a counterclaim related to the original claim against the claimant[1302]- However, if the defendant has already contested the jurisdiction then the implied submission is not assumed.

    In the *William*[1303] case, the judge held that if the defendant merely contests the jurisdiction, he is not deemed to have submitted to the jurisdiction.

6.8.2.1: Defendant objects to the jurisdiction:

The defendant has the right to reject/challenge/refuse the authority of any court. If the defendant does not submit[1304] but wishes to contest the jurisdiction, the acknowledgement of service will be ineffective until the court decides under CPR part 11 (see-2.12.3). The *Hoddinott*[1305] case held that the challenge to dispute the jurisdiction

[1301] *Al-Bassam v Al-Bassam* [2004] WTLR 157.
[1302] *Brealey v Board of Management of Royal Perth Hospital* [1999] 21 WAR 79.
[1303] *William & Glyn's Bank v Astro Dinamico* [1984] 1 WLR 438.
[1304] *CAN Insurance Co Ltd v Office Depot International (UK)* [2005] EWHC 456 (Comm).
[1305] *Hoddinott and others v Persimmon Homes (Wessex) Ltd* [2007] EWCA Civ 1203; a challenge can be on the grounds that the court has no jurisdiction often involves asking the court to set aside its original

would negate any doubts about the defendant's submission. The *Ara Media*[1306] case concluded that the defendant who contests the court's jurisdiction does not thereby submit. After the dispute of jurisdiction is submitted, the court has to stop the proceedings; otherwise, it would be a statutory breach of Article 6 (see-6.8). Unless it is proved that the defendant has already agreed to submit to English jurisdiction. The service will be considered effective, despite the defendant's challenge[1307]. For instance, a blogger mentions in his blog that in case of a libel action, he wants to be prosecuted in English courts (see-6.5.2.1). This statement would be deemed sufficient to pursue a libel claim against him in England. In such circumstance, if he is served with the writ, his submission to jurisdiction will be automatic and he cannot challenge the court's authority at any stage of the case. Similarly, if the defendant already agreed on a choice of forum clause, it will be considered an express submission (see-6.5.2).

The defendant can still contest jurisdiction if there are contravening factors to suggest otherwise[1308]:

1. Medical grounds
2. Banned from entering the UK
3. When his entry to the UK may be against public policy
4. Immigration restrictions

In cross-border online communication, a defendant can be in any part of the globe (see-2.5) and might take a while to step foot on English soil. There could also be a situation when the defendant was in England when he published libellous statement, then leaves England, and does not return. In such situations, it is immensely important that the claimant should be allowed to serve the claim form outside the jurisdiction.

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grant of permission to serve out of the jurisdiction. The defendant can challenge each condition that the claimant put forward when obtaining permission.

[1306] *Global Multimedia International Ltd v Ara Media Services* [2007] 1 ALL ER (Comm) 1160.

[1307] *Texan Management Ltd v Pacific Electric Wire & Cable Company Ltd* [2009] UKPC 46.

[1308] A challenge on these grounds must always include evidence that there is another court of competent jurisdiction, which is distinctly more appropriate, and it is not unjust that the claimant be deprived of the right to trial in England.

6.9.: Service outside the jurisdiction:

, court can allow service out of jurisdiction[1309]. Common law empowers courts to use its discretion[1310].

CPR r6.3 grants the claimant a right to seek permission to serve proceedings on foreign-based defendant. The discretionary power is endorsed through CPR r 6.20[1311] and EU regulations[1312] to allow the claimant permission to serve. This process is not just a formality because the claimant has to prove that it is a proper case for which permission is needed. In the Parker[1313] case, it was established that the claimant bears the onus to satisfy court that why permission should be granted.

The claimant does not have to satisfy the court beyond reasonable doubt (see-6.9.1). If the claimant can prove that England is the most appropriate forum, court should grant the permission to serve the defendant. In the *Mujur*[1314] case, it was decided that to obtain such permission the claimant has to prove that England is the appropriate forum. Lord Goff[1315] also noted that it would be sufficient for the claimant to show that there is a substantial issue of law. If the court in another country starts the proceedings, then the English court has to withdraw its jurisdiction[1316]. In the *Nemours*[1317] case, it was established that English approach is not based on 'first come, first served'.

It is questionable that why the claimant cannot commence proceedings against the defendant in the country where the defendant is currently residing (it may not be favourable to the claimant considering cost, logistics and evidence issues (see-6.2.2). In short, the claimant has to show that his reputation is harmed, which falls under one of the headings of CPR 6.20 'jurisdictional gateway', and the court permission is compulsory to bring the defendant to justice.

[1309] Lord Collins of Mapesbury, (2012), 'Dicey, Morris & Collins on the Conflict of Laws', (15th Ed, Sweet & Maxwell, London), Rule 34, at para 11.141.
[1310] The Common Law Procedure Act 1852.
[1311] CPR PD 6B, Section 4, Part 6, Para 3.1, enables the court to allow out of jurisdiction service.
[1312] Art 5 and Art 6 of Brussels I Regulation also provide the same provisions.
[1313] *Parker v Schuller* [1901] 17 TLR 299 (CA).
[1314] *Mujur Bakat BHD v Uni Asia General Insurance* [2011] EWHC 643.
[1315] *Seaconsar Far East Ltd v Bank of Iran* [1994] 1 AC 438.
[1316] This approach is not consistent with the EU because Art 27 of Brussels I Regulation allows the EU court to maintain its jurisdiction, if the claim was brought in that court.
[1317] *El du Pont de Nenours v Agnew & Kerr* [1987] 2 Lloyd's Rep 585.

6.9.1.: Permission under CPR r6.20:

the EU Regulations assumption of jurisdiction is mandatory[1318]. If English court has jurisdiction under the EU, the claim form to the defendant can be served without court's permission. In traditional rules, jurisdiction is discretionary[1319]. HL[1320] concluded that it is based on the assessment of forum convenience. If the defendant has any assets in England, it will allow the court an automatic jurisdiction (see-2.3.1, 6.4.1). Otherwise, court has to use its discretion under CPR r6.20[1321]. Permission is only granted if 'England is a proper place to bring the claim'[1322]. Over the years, English courts have explored the limits of the power to exercise their discretion[1323]. The CA granted a worldwide freezing order in a case when the defendant based overseas and he had no property in England. In cyberspace libel, such discretionary powers of the courts would be very helpful in prosecuting a the defendants worldwide[1324].

The claimant has to satisfy the court on Lord Goff' 'The *Spiliada test*[1325]'. HL explained the importance of this criterion in the *Seaconsar*[1326] case. Lord Collins[1327] later reiterated that every claimant, who is seeking to serve a claim form on a foreign-based defendant. It is based of following tests:

1. The Merits test – A serious issue is to be tried
2. The Forum test – England is the proper forum in which the proceedings should be entertained
3. The Gateway test– The claim falls within one of the jurisdictional gateways Paragraph 6B r3.1 of the practice direction to Part 6 CPR

[1318] Hayward, R., (2005), 'Conflict of Laws', (3rd Ed, Cavendish Publishing, London), pp 47.
[1319] *The El Amria* [1981] 2 Lloyd's Rep 119.
[1320] *The Sennar (no 2)* [1985] 1 WLR 490 (HL).
[1321] http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part06#IDA5I3HC [Assessed 22nd December 2016].
[1322] Civil Procedure Rule r 6.37(3).
[1323] *Derby v Weldon* [1990] Ch. 48; CA granted an injunction to prevent the disposal of defendants foreign assets even though defendant had no assets in England.
[1324] Fentiman, R., (2010), 'International Commercial Litigation', (1st Ed, Oxford University Press), pp 9.
[1325] *Spiliada Maritime Corp v Cansulex Ltd* [1987], HL UK.
[1326] *Seaconsar Far East Ltd v Bank of Iran* [1994] 1 AC 438; HL set three rules to be satisfied.
[1327] *Altimo Holdings and Investment Ltd v Kyrgyz Mobil Tel Ltd* [2012] 1 W.L.R. 1804 at [71] - [88].

6.9.1.1: The Merits test:

It was established in the *Opthalmic*[1328] case, that court might not grant permission if the issue is inconsiderate. There should be a reasonable prospect of success[1329]. It is obvious that to resolve a claim of £50, no one would ask the court's permission to serve a claim form outside the jurisdiction. Court held in the *Jackson*[1330] case that there has to be a 'real and reasonable' case to request for permission of service. The central question involves: Do the issue contain a substantial question of law or fact[1331]. Therefore, the relevant court must consider all the factors on the balance of probability to continue the proceedings[1332]. Lord Woolf[1333] stated in his declaratory judgment that there has to be a justification for the continuation of the proceeding.

Defamatory material via social media can be shared without any thought process - it does not mean that every case is worth a trial. The claimant has to go through this barrier as Lord Hope stated, "it is designed for the cases which are not fit for trial at all[1334]". On the other hand, Section 1 is a step forward in collaborating traditional laws to social media because it imposes a test of 'seriousness' (see-2.13.1.1). Once, the court is satisfied that the claimant has a reasonable prospect of success, permission of service will be granted. Gross J[1335] allowed permission to serve in India and stated that the matter should be resolved without further delay.

Waller LJ[1336] noted 'it could be that one party has a much better argument on the available evidence'. If the claimant is a public figure, using moral/religious grounds or obtained public support, there is a good chance for him to produce good arguments to get permission to serve[1337]. The public support and sound arguments should not be considered in their literal meaning (see-7.20). If a claimant can get media support it does not mean that he is right because court's decision will be based on the facts

[1328] *Opthalmic Innovations International Ltd v OI International Inc* [2004] EWHC 2948.
[1329] *Wilton UK Ltd & Anor v Shuttleworth & Ors* [2018] EWHC 911 (Ch); if a permission is refused the claimant has an option to rely on r6.15 – Denton Principles (it is beyond the scope of this thesis).
[1330] *Owusu v Jackson* [2002] EWCA Civ 877.
[1331] *Seaconsar Far East Ltd v Bank of Iran* [1994] 1 AC 438.
[1332] *Masri v Consolidated Contractors International (UK) Ltd* [2005] EWHC 944 (Comm).
[1333] *Messier Dowty Ltd v Sabena SA* [2000] 1 WLR 2040.
[1334] *Three Rivers District Council v Bank of England* (no 3) [2003] AC 1.
[1335] *Swiss Reinsurance Co Ltd v United India Insurance Co* [2004] IL Pr4.
[1336] *Canada Trust Co v Stolzenberg* [1998] 1 WLR 547.
[1337] *Canada Trust Company v Stolzenberg* (no2) [1998] 1 WLR 547.

presented. As evident from the *Malina*[1338] case, where she had public support for being the wife of US president, court still refused her case for lack of jurisdiction. It is the merits of the case, which guides judges to allow service of writ outside jurisdiction. In the *Reinsurance*[1339] case, court held that an issue, which is fanciful, is not a serious issue to be tried.

In short, the claimant has to prove his reasonable prospect of success on the merits of the case. Clark LJ[1340] stated that this should not be mere fanciful thought; hence the claimant has to provide an affidavit along with his claim form. Cooke-J[1341] held that failure to establish an argument means that permission will not be granted. Colman J adopted a similar approach that lack of evidence will deter court to grant permission[1342].

6.9.1.2: The Forum test:

The second element is about forum convenience which is derived from the case of *Spiliada*[1343]. The claimant has to prove that England is the most appropriate forum to try this case in the best interest of the parties and if not; it may cause a grave miscarriage of justice. In English law, the existence of jurisdiction by 'forum test' varies on a case-by-case analysis because it helps maintain the standards of justice; however, it reduces judicial predictability and certainty (see-2.17.1). Privy Council[1344] also reaffirmed this approach for allocating proceedings to the most appropriate forum based on forum conveniens. English court will determine the appropriate forum in two stages[1345]:

1. The dispute is closely related to England
2. Justice will not be done abroad

Lord Wilberforce introduced a test based on appropriateness rather than practical convenience and natural forum (see-7.12). The court is obliged to consider the factors of the availability of witnesses, legal issues involved, local knowledge of the parties,

[1338] *Melania Trump v Daily Mail* [2017] SCNY, Commercial Division No. 650661.
[1339] *Swiss Reinsurance Co Ltd v United India Insurance Co* [2004] IL Pr4.
[1340] Clark LJ in *Carvill America Incorporated v Camperdown UK Ltd* [2005] 2 Lloyd's Rep 457.
[1341] *Bear Sterns Plc v Forum Global Equity Ltd* [2006] EWHC 1666.
[1342] *Konkola Copper Mines Plc v Coromin* [2006] 1 Lloyd's Rep 410 (CA).
[1343] *Spiliada Maritime v Cansulex Ltd* [1987] AC 460.
[1344] *Aerospatiale v Lee Kui Jack* [1987] AC 871.
[1345] Hayward, R., (1999) 'Conflict of Laws', (3rd Ed, Cavendish Publication, England), pp 15.

expenses,[1346] and forum suitability. Although it is court's discretion to allow service outside the jurisdiction, it has to consider the elements of 'forum conveniens' and 'appropriate forum' for both parties to meet the ends of justice'. It is pivotal to know that the same test of 'forum non conveniens' is applied for the stay of the proceeding; however, the burden of proof shifts from the defendant to claimant[1347]. About forum shopping, the English courts do not merely focus on the convenient forum, but which country's court is 'appropriate" (see-7.19.3). the claimant must not only persuade the court that England is appropriate but also prove it is clearly so[1348].

6.9.1.3.: Burden of proof:

If the defendant disputes the jurisdiction, he will have the burden to prove that England is not the competent forum to try this case (see-2.14). If the defendant is not present in England, the claimant has to satisfy the court that England is the convenient forum[1349]. This shift in the burden depends if the claimant is requesting permission of the defendant is challenging that permission[1350]. Now, after that, if the defendant wants to challenge the jurisdiction on the grounds of 'forum non conveniens' the burden will shift to him to prove there is another competent forum to solve this dispute (see-2.17.1).

Patten-J[1351] clarified this situation: "If the defendant can prove that England is not a convenient forum the stay will be granted unless the claimant proves other compelling circumstances[1352] (a matter of justice require that the stay should not be granted). Concerning, 'forum non-convenience' if a stay is refused, it implies that different proceedings being persuaded concurrently in different courts[1353], which can cause delay, extra expenses and inconvenience for the litigants. Kealey QC[1354] set aside a proper service and granted a stay despite England was appropriate forum because of concurrent proceedings in New York. This judgment reflected English rules on *lis-alibi pendis*

[1346] *Amin Rasheed Shipping v Kuwait Insurance* [1984] AC 50 at 72.
[1347] Samson, E., (2012), 'The Burden to Prove Libel: A Comparative Analysis of Traditional English and U.S. Defamation Laws & the Dawn of England's Modern Day, Cardozo Journal of International and Comparative Law, Vol 20, Issue 3.
[1348] Rosenoer, J., (1997), 'Cyber-Law: The Law of Internet', (1st Ed, Springer-Verlag, NY), pp 227.
[1349] Hayward, R., (1999) 'Conflict of Laws', (3rd Ed, Cavendish Publication, England), pp 16.
[1350] Fawcett & Carruthers, (2010), 'Private International Law', (14th Ed, Oxford University Press), pp 354.
[1351] *SMAY Investments Ltd v Sachdev* [2003] WL 1202657.
[1352] *SMAY Investments Ltd v Sachdev* [2003] WL 1202657; 206 at Para 45.
[1353] *Cleveland Museum of Art v Capricorn Art International SA* [1990] 2 Lloyd's Rep 166.
[1354] *Dr Insurance Co v Central National Insurance Co* [1996] 1 Lloyd's Rep 74.

(about choice of jurisdiction – jurisdiction pending somewhere else[1355]), which are, unlike Brussels and Lugano-convention, not based on 'first come first serve'[1356]. Under the EU law rule, "the first party in time to issue proceedings at court secures the jurisdiction of the court in that particular country[1357]". Proceedings involving the same cause of action and between the same parties have been brought in England and in another state but if the other court also has jurisdiction, the English court must decline jurisdiction[1358]. It also helps to avoid concurrent jurisdiction. *Lis-alibi pendis* rule has great importance in private international law because a judgment of court with lack of personal jurisdiction will have no effect[1359]. Although *lis-alibi pendis* is discretionary[1360], however, jurisdiction is mandatory to decide a case (it is beyond the scope of this thesis).

6.9.1.4.: The Gateway test:

The third issue to be proved is that the cause of action falls within the scope of CPR PD 6B[1361]. The most relevant for this thesis are:

1. CPR-6.20 (1): The defendant is domiciled in England but residing abroad at the time of commencement of proceedings

2. CPR-6.20 (2): Where an injunction is obtained to stop the defendant doing an act within the jurisdiction, leave will not be granted as established in The Siskina[1362] case, where the claimant had no other course of action

3. CPR-6.20 (3): If a claim is served within/without of jurisdiction but the second defendant is outside of jurisdiction. In the case of online defamation, if the

[1355] Campbell, B., (1990), 'Black's Law Dictionary' (6th Ed, West publishing co, US), pp 853.
[1356] Hayward, R., (1999) 'Conflict of Laws', (3rd edition, Cavendish Publication, England), pp 35.
[1357] Article 5 of the Brussels Regulation states the court which seized jurisdiction first must not decline it because Forum non-conveniens is not a valid argument in the EU courts.
[1358] Mojolaoluwa O., (2017), 'Private International Law and the Doctrine of Lis Alibi Pendens'; Available at SSRN: https://ssrn.com/abstract=2963914 [Assessed 12th November 2017].
[1359] Fawcett, J., (1984), 'Lis Alibi Pendens and the Discretion to Stay', The Modern Law Review, Vol 47, issue 4, pp 481-486
[1360] *Swakopmund Airfield v Council Of The Municipality Of Swakopmund* [2011] NAHC 71.
[1361] Hayward, R., (1999) 'Conflict of Laws', (3rd Ed, Cavendish Publication, England), pp 17; http://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_part06b [Assessed 5th January 2018]
[1362] *The Siskina* [1979] AC 210.

second defendant is not a proper party to action the grant will not be allowed[1363]. In the *Komaneni*[1364] case, the application of CPR-6.20 was refused because the defendant has no real connection with the dispute.

4. CPR6.20 (8): Grants leave to serve in tort related issues when the damage is sustained or resulted from an act committed within the jurisdiction. It also reflects Article 5[1365], which intends to mitigate the concerns related to establishing the place of tort. English courts may only assume jurisdiction if either the damage was sustained or the wrongful act committed in England[1366].

In the *Booth*[1367] case, court held that sustained damage might be physical or economical but some 'damage/harm' must be sustained in England. Article 5[1368] also provides special jurisdiction because the defendant can also be sued in the country where the harmful event occurred[1369]. The tort of online defamation, however, raised the contentious issues as discussed in the *Jameel*[1370] case, where English courts assumed jurisdiction under CPR 6 (20) however, the defendant sought to stay the proceeding[1371].

These tests were developed for the betterment of the litigants[1372] because jurisdiction of the unfavourable forum might render the victory somewhat pyrrhic[1373]. Similarly, delay in judgment may deprive the winning party of the benefits of victory[1374]. These tests enable courts to evaluate the suitability issue concerning remedies, recoverability of cost, documentary evidence, witness's availability and neutrality of the forum along with other contravening factors before exercising jurisdiction[1375].

[1363] *United Film Distribution Ltd v Cbbabria* [2001] 2 ALL ER (Com) 865.
[1364] *Komaneni v Rolls-Royce Industrial Power (India)* [2002] IL Pr 40.
[1365] Art5 (3) Brussels Convention 1968 and Brussels I Regulation.
[1366] Hayward, R., (1999) 'Conflict of Laws', (3rd Ed, Cavendish Publication, England), pp 21.
[1367] *Booth v Phillips and Others* [2004] 2 Lloyd's Rep 457.
[1368] Art5 (3) Brussels Convention 1968 and Brussels I Regulation.
[1369] *Kalfelis v Schroder, Munchmeyer, Hengest & Co* [1988] ECR 5565.
[1370] *Dow Jones & Co v Jameel* [2005] E.M.L.R. 16 .
[1371] Hayward, R., (2006), 'Conflict of Laws', (4th Ed, Cavendish Publication, London), pp 20.
[1372] *Dallah Real Estate & Tourism Holding Co v Pakistan* [2010] UK SC 46.
[1373] Houtte, V., (2011), 'What's New in European Arbitration?', Dispute esolution journal, Vol 66, Issue 1, pp 16.
[1374] Donnelly, B., & Pratt, J., (2011), 'A Clash of Jurisdiction', Macfarlanes LLP.
[1375] http://www.inhouselawyer.co.uk/index.php/litigation-a-dispute-resolution/9656-a-clash-of-jurisdictions [Assessed 22nd December 2016].

6.10.: Summary:

Why is appropriate jurisdiction essential: It may change the judgments altogether. If the case of *Jameel* had been tried in France, the outcome would be radically different because defamation in France is treated as a criminal offence. The logic of 'civil jurisdiction', other than the practice of assuming jurisdiction, is similar in almost every legal system[1376]. This commonality invites to introduce a standardised set of rules for assuming jurisdiction in civil actions. Especially, social media libel required international jurisdiction because the litigants may have different nationalities[1377]. Otherwise, different courts from several countries might have the jurisdiction but the international rules of jurisdiction will find a competent court to adjudicate that case[1378].

6.10.1.: Conclusion

This chapter concludes that if a court decides that it has jurisdiction, it does not mean that it will necessarily grant the required remedy to the claimant because the court competence to decide a case has no impact on the judgment of that case. Similarly, if a court is not competent to hear a case, it does not mean that the claimant may lose that case in another jurisdiction[1379]. The determination of jurisdiction is merely a theoretical step of the reasoning that must be conducted by any court where the claim is brought[1380]. The assumption of jurisdiction rules needs clarity in libel claims. It is even harder for lawyers to advise their clients to pursue a claim in a home state because 'the variables', on which the outcomes depend, vary from case to case[1381]. Even a claim involving social media makes judges interpret traditional laws differently[1382] to cope with technology. As Warby J noted, "Where something is not a matter of common

[1376] Mehren, V., (1994), 'Adjudicatory Jurisdiction' in Fentiman, R. (eds.), (Boston University Press), pp 35, 96.
[1377] Bernhard, M., (2010), 'How has the Law Attempted to Tackle the Borderless Nature of the Internet?', International Journal of Law and IT, Vol 18, Issue 2, pp 142-175.
[1378] Brussels, 14/01/2003, COM (2002) 654 [Commission of EU- Annex 1].
[1379] Fawcett and Carruthers, (1999), 'Private International Law', (14th Ed, Oxford University Press), Ch. 11.
[1380] Mehren, V., (1983), 'Adjudicatory Jurisdiction: General Theories Compared and Evaluated', Boston law review, Vol 63, pp 279.
[1381] Paul, B.C., (1999), 'When Cyberspace Meets Main Street: A Primer for Internet Business Modelling in an Evolving Legal Environment', Hastings Comm. & Ent. Law Journal, Vol 22, Issue 97, pp 111.
[1382] Especially for Twitter & Facebook which are relatively new medium, and not everyone knows all the details of how it works: Detailed in Appendix I.

knowledge a judge is not entitled to bring his or her own knowledge to bear. The facts normally have to be proved[1383]".

This chapter finds that jurisdictional conflicts in social media defamation are reaching beyond domestic laws. Online libel can only be determined adequately if the legal authorities have special knowledge of computer technology, social media and IT systems. Although the medium has changed, the rights of the parties are the same, so to assume jurisdiction in cyberspace several special factors have to be analysed skilfully[1384]. It is interesting that domestic judges are asked to decide how to regulate content outside their borders/how to regulate free speech (see-2.6). Is it not a job for policymakers who are democratically elected (see-9.8). Courts are not well equipped to shape national policy that touches not only on free expression rights but on foreign relations and national IT infrastructure.

[1383] *Monroe v Hopkins* [2017] EWHC 433 (QB).
[1384] Freeman, E., (1999), 'Issue of Jurisdiction in Cyberspace', Information System Security, Vol 7, Issue 4, pp 20.

SECTION 3:

Critical Reasoning and Interpretation

[CH. 7; CH. 8 and CH. 9]

Chapter 7

Critical Evaluation

Application and Analysis of Case Laws

7.1.: Synopsis of this chapter:

The transnational nature of social media libel challenges the territorial courts[1385] because it complicates the definitional understandings of what is regarded as 'published', 'content', 'publishing', and 'media producers' (see-5.8.1). It has rendered some existing legal provisions inadequate by complicating their application[1386]. The inability of the Defamation Act 2013 to achieve harmony indicates that the lawmakers will continue to play 'catch-up[1387]' (see-1.3.1). There is an argument to be made that its provisions may lead to the suppression of genuine claims because there is no balance between freedom of speech and individual reputation (see-2.13.1).

The analyses of the previous chapters established that when a foreign element is identified in a social media defamation case, it will involve 'systems of law[1388]' rather than the domestic/internal law of England. For instance, English courts may have to apply English laws as well as foreign laws. For example, to exercise jurisdiction for non-EU defendants, English domestic law is applied[1389]; however, the selection of applicable foreign laws depends upon the process of classification (see-4.3.2). Similarly, in the claims involving EU nationals, the Brussels Regulations are applied[1390]; for extradition/comity/enforcement issues, international treaties may be applied, and for calculating damages, law of forum is applied. The application of different sets of rules for similar disputes may cause inconsistency and disharmony (see-1.5).

[1385] Dixon, H., (2013), 'IPad wizardry for beginners', Judges' Journal, Vol 52, Issue 2, pp 36-39; technological innovations by social media has affected how the legal profession operates.

[1386] Angelotti, E., (2013), 'Twibel Law: What Defamation and its Remedies Look Like in the Age of Twitter', High Technology Law Journal, Vol 13, pp 433; the rise of social media has increased defamation. Social media libel claims have become a significant portion of legal disputes. Legal scholars have developed new vocabulary to denote continued influence of social media i.e. Twible, social community, cyber world, Facebookistan etc.

[1387] Mangan, D., Gillies, L., (2017), 'The Legal Challenges of Social Media', (1st Ed, Elgar Publishing, UK), pp 8.

[1388] *Ahuja v Politika Novine I Magazine & Ors* [2015] EWHC 3380 (QB); the court applied traditional law to assume jurisdiction and noted that that Serbian, Swiz and Indian law can be applied as applicable law.

[1389] Szigeti, P. D., (2017), 'The illusion of territorial jurisdiction', Texas International Law Journal, Vol 52, Issue 3, pp 369-399.

[1390] The Defamation Act 2013 adopts a dual approach to claims by foreign claimants. Under the Brussels Regulation (Articles 2 and Articles 5(3)) and the Lugano Convention the claimant has the choice of suing the defendant in the court of the member state in which it is domiciled for all the damage which he has suffered through publication throughout the European Union (giving the defendant home advantage but an inability to contest jurisdiction).

7.1.1.: Objectives of this thesis:

This research aims to evaluate whether **'Cyberspace outdates jurisdictional defamation laws'.** To evaluate this objective, this thesis examines the following two questions, from the critical examination of the relevant literature (see-1.10 and 2.19).

Question 1:

"HAS CYBERSPACE CHANGED THE APPLICATION OF PRIVATE INTERNATIONAL LAWS BY DISINTEGRATING THE DOMINANCE OF TRADITIONAL SOVEREIGN STATES?"

Question 2:

"IS THE EXISTING LEGAL FRAMEWORK ADEQUATE TO DEAL WITH CIVIL DISPUTES (DEFAMATION) BASED IN SOCIAL MEDIA?"

These questions are examining whether the traditional private international law rules can be applied to cyberspace defamation with the same consistency as they are applied to ordinary defamation issues.

If the answer to these questions is affirmative, this thesis will establish that the traditional laws are not invalidated for cyberspace so the existing defamation laws can also be applied to social media libel (see-8.6).

If the answer to these questions is negative, this thesis will establish that traditional laws are invalidated for cyberspace so the existing defamation laws need to be amended/modified for social media libel (see-8.7).

7.1.2.: The process of the analysis:

Question 1 involves 'jurisdiction' and 'choice of law' rules, which are part of Civil Procedural Rules and common law. Question 2 involves the existing defamation laws which consist of the Defamation Act 2013.

The relevant sections of 2013 Act are Section 1 'serious harm', Section 8 'single publication rule' and Section 9 'action against a person not domiciled in the UK or a Member State' (see-2.13.1). For simplicity, this analysis process is divided into four themes. Theme 1 and 2 answer the first research question whereas theme 2 and 3 answers the second research question.

Theme 1: The application of private international law rules are consistent /inconsistent for both ordinary and social media defamation (see Table-8)

Theme 2: The application of the traditional rules do/do not disintegrate cyberspace (see Table-9)

Theme 3: The CPR rules can/can not be applied to social media libel (see Table-10)

Theme 4: The Defamation Act 2013 is suitable/inadequate for social media libel (see Table-11)

7.1.3.: The interpretation of the themes:

The above-mentioned themes are already practiced for traditional media defamation. Analysis of these topics for conventional media has already been conducted; however, this chapter will evaluate if they can also be applied, with the same consistency to digital media, after the 2013 Act. This chapter will analyse recent case laws to see if they are applied to social media libel with the same certainty as to publication in traditional media. From the interpretation of existing literature and the analysis of social media, defamation and jurisdiction, these themes can be divided into the following sub-themes, as discussed in the tables below.

7.1.4.: The process of interpretation:

Interpretation must be considered because digital communication was also available (blogs, email and articles) before the Defamation Act. However, social media changed the nature of digital publication to more casual communication. Hence, a comparison is

drawn between print media and internet publication before the 2013 Act with social media publication after the 2013 Act.

7.1.5.: Key to the tables:

Application pre Defamation Act 2013

This tab shows evaluation of whether the same rules were applied with consistency before the 2013 Act – it reflects back to the analysis conducted under the CPR rule.

Application post-Defamation Act 2013

This tab shows evaluation of the changes brought to existing rules since the 2013 Act – this analysis is based on the case Laws decided since 2013.

Modification required

This tab considers whether the existing framework is applicable to social media libel or modification is required for digital speech.

Conclusion

The conclusion is drawn from above comparison with regards to freedom of speech and statutory reputation rights.

Table-8: Private International Law Rules

Theme-1	**Sub-themes**	**Application pre-Defamation 2013 Act**	**Application post-Defamation 2013 Act**	**For social media**	
				Modification required	Conclusion
The application of private international law rules	Identifying the publisher	Applied with consistency	7.18	YES	…
	Intentional or Actual damage	Produced harmony	7.15	NO	Applicable to social media
	Actual malice in libel	Modified for the internet	7.20 7.20.1 7.20.2	YES	…
	Jurisdiction over foreign publisher	Inconsistent	7.9	YES	…

Table-9: Disintegration of Cyberspace

Theme-2	**Sub-themes**	**Application pre-Defamation 2013 Act**	**Application post-Defamation 2013 Act**	**For social media**	
				Modification required	Conclusion
Disintegration of cyberspace by applying traditional rules	Forum non-conveniens	Applied with consistency	7.12	NO	Applicable to social media
	The extent of publication	n/a	7.19	NO	Applicable to social media
	Jurisdictional rules (un) certainty	Applied with certainty	7.8 7.13	NO	Applicable to social media
	Are courts deviating from traditional defamation rules	A little deviation is found after the online publication	7.9 7.9.1 7.9.2	NO	A little deviation is acceptable for social media

Table-10: Civil Procedural rule

Theme-3	**Sub-themes**	**Application pre-Defamation 2013 Act**	**Application post-Defamation 2013 Act**	**For social media**	
				Modification required	Conclusion
The application Civil Procedural Rules	Service out of the jurisdiction	Applied with consistency	7.3	No	Applicable to social media
	Application of traditional jurisdictional rules	Produced harmony	7.4	YES	…
	Service of writ	Modified for the internet	7.3 7.5	YES	…
	Proceeding in the defendant's absence	Inconsistent	7.6	YES	…

Table-11: Adequacy of the 2013 Act

Theme-4	**Sub-themes**	**Application pre-Defamation 2013 Act**	**Application post-Defamation 2013 Act**	**For social media**	
				Modification required	Conclusion
The adequacy of the Defamation Act 2013	Section 1 Harm Threshold	Jameel Threshold was consistent	7.14 7.16 7.16.1	YES	Inconsistent since 2013 Act
	Section 8 Single publication/cause of action	Multiple publication was better	7.11 7.13	Yes	Inconsistent since 2013 Act
	Section 9 Jurisdiction Threshold	Traditional Rules are suitable	7.3 7.7	YES	Inconsistent since 2013 Act
	Freedom of Speech	Inconsistent	7.21	No	Consistent under Art 10
	Importance of context in social media	Context is a new idea based on social media	7.17	No	Applicable to social media

7.1.6.: Analytical method:

Covering every single defamation case is impossible. Therefore, this chapter covers the cases heard in the higher courts, which are analysed to observe, 'How judges balance social media and traditional jurisdictional defamation concepts with regards to freedom of speech'. Cases were selected by using the following method[1391] (see Chapter-3):

1. Cases of 'defamation', 'libel' and 'social media' containing reviews by leading authors were searched[1392];
2. Only those social media libel cases which fitted within the objectives of this thesis[1393] (Section 1, Section 8 and Section 9) were further analysed;
3. Those cases, which illustrate how the use of social media can create un-intended consequences, are analysed with regard to law reports and legal commentary on social media libel[1394].

7.2.: Application of case laws:

Under common law, there have been few leading authorities[1395] involving cyberspace defamation, which has strongly affected the courts' decisions in England (see-7.9). England introduced the 2013 Act, which is also applicable to social media communication. This application of recent case law will demonstrate that the same rules are applied in harmony with the constantly changing nature of communication[1396]. Libel proceedings are not just about reputation[1397] so this analysis will evaluate how to strike a balance between one's constitutional right of freedom of speech and else's civil right of reputation.

[1391] Lawrence, B., & Chung, M., (2003),' The Layers Principle: Internet Architecture and the Law', University of San Diego, Public Law and Legal Theory Research Paper 55.
[1392] The cases involving social harm, meaning and jurisdiction involving provisions of the Defamation Act 2013 always followed by a critical review by media journalists.
[1393] The selected cases analyse the court precedents for social media libel: What issues they address; whether there is a need for future legislation concerning social media libel.
[1394] Leading articles on Defamation Act 2013 are considered and a comparison of traditional press and social media is conducted with other common law jurisdictions.
[1395] *Gutnick, LICRA, King, eDate, Google* – these cases are detailed below (see-7.4).
[1396] Although 1952 and 1996 Defamation Acts are not repelled by 2013 Act hence it is to be seen if this newly developed technology demands amending common law precedents.
[1397] As demonstrated in the *New York Times vs Sullivan* case 1964, freedom of speech is at stake in this type of litigation, which forms the morality and conduct of a society in modern communication.

7.3.: Service of the 'writ':

The determination of a libel claim becomes complicated when the defendant is foreign-based or the 'cause of action' initiated in a foreign state[1398]. Common law rules determine personal jurisdiction, but for EU-based defendants, only the Brussels regime[1399] is applied (see-6.8.1.1). For non-EU defendants, the CPR[1400] set out the framework for service of the documents outside England (see-6.9.1). It explains the rules, which determine whether the claim can be served with or without the court's permission and the procedure for effecting service (see-2.12). A claimant has four months to serve a claim[1401], from the date of issue[1402]. This service will give legal notice to the defendant of a court's assumption of jurisdiction (see-4.5.2). It enables him to respond to the proceedings before the court (see-2.12.3).

CPR also covers service of foreign proceedings in England (see-2.72). It allows the foreign-based claimants to start proceedings in England against foreign-based defendants[1403](see-6.9.1.2). If a claimant requires the court's permission to serve the 'claim-form', he has to satisfy the court on three accounts[1404]:

1. The requested issue is serious[1405] and involves the foreign defendant
2. There is a 'good arguable case' that the claim falls within the 'jurisdictional-gateways'(see-6.6)
3. England is the appropriate forum in which, the court can exercise its discretion to grant service outside of the jurisdiction (see-2.17.1).

[1398] *Michelle Foran v (1) Secret Surgery Ltd (2) Powszechny Zaklad Ubezpieczen Spolka Akcyjna (3) Wojciech Waclawowicz (4) Emc Instytut Medyczny Spolka Ackyjna* [2016] EWHC 1029 (QB).
[1399] If the defendant is not domiciled in a Member State and there is no jurisdiction agreement in favour of an EU member state court, English traditional law/common law is applicable.
[1400] CPR does not cover serving foreign proceedings in another foreign jurisdiction because it is beyond the sovereignty principles to dictate proceedings in other forums (see 2.61 and 6.5.1).
[1401] Where the claim form is to be served out of the jurisdiction, it must be served within six months of the date of issue (CPR 7.5 (2).
[1402] *Brightside Group Ltd v RSM UK Audit LLP* [2017] EWHC 6 (Comm); Baker J also explained the rules of actual service and the difference between r7.5 and r6.14.
[1403] In traditional media only a tenuous was enough to invoke English jurisdiction; however, since 2013 Act jurisdiction of English courts depends on the connection with England and gravity of harm suffered.
[1404] *Williams v Central Bank of Nigeria* [2013] EWCA Civ 785.
[1405] The claim must have a real prospect of success.

7.3.1.: Service of claim pre-2013 Act:

Traditionally, the claimant has to show that the claim has a serious issue and has a good prospect of success in England[1406]. In the *Altimo*[1407] case, the judge granted permission because the claim had a better prospect of success in England. The above criteria were also applicable to 'online defamation' before the 2013 Act. In the *CJSC*[1408] case, the court decided that a claimant could only serve a foreign defendant by CPR 6.36 (a)[1409].

The 'jurisdictional-gateways' are not modified in the 2013 Act. If the claim does not fall within these gateways, it may be rejected. In the *Google* [2015][1410] case, the court found that the claim for misuse of private information did not fall within the existing gateway for tort claims[1411]. If the court exercises jurisdiction, it can refuse to start proceedings if the libel issue does not fall within the identified gateways of CPR. Hence, there is a need for an amendment, especially for the communication concerning social media.

7.3.2.: Service of claim post-2013 Act:

The traditional service is based on 'good arguable case' and jurisdiction depends on 'convenient forum' (see-6.6). The method of service has not been updated for online libel; however, the standard of exercising jurisdiction has been modified after the 2013 Act. Now, the 'good arguable case' becomes even more significant for social communication because a statement can be an opinion, a compliment or a communication-joke[1412].

[1406] The claimant must prove that there is a serious issue to be tried on the merits of the claim, such as a substantial question of fact or law or both. There must be a real as opposed to a fanciful prospect of success; the claim falls within one of the jurisdictional "gateways" in CPR PD 6B 3.1 and England is the proper place to exercise jurisdiction.

[1407] *Altimo Holdings and Investment Ltd v Kyrgz Mobil Tel Ltd* [2012] 1 WLR 1084 [71].

[1408] *AK Investment CJSC v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7.

[1409] The Claimant may serve a claim form out of the jurisdiction with the permission of the court if any of the grounds set out in paragraph 3.1 of Practice Direction 6(b) apply.

[1410] *Vidal-Hall v Google Inc* [2015] EWCA Civ 311.

[1411] The 'jurisdictional gateways' relates to claims in tort where the damage was sustained within the jurisdiction or resulted from an act committed within the jurisdiction. If a libel triggered outside England, it may not apply.

[1412] A research conducted in 2016 showed that 46% of 18- to 24-year-olds were unaware they could be sued for tweeting an unsubstantiated rumour about another person. Besides, online users are are not aware that sharing defamatory posts on social media may be regarded as an endorsement, significant enough to trigger legal action.

Since, the 2013 Act, the judges have modified their interpretations to adopt social media communication. Now if a communication does not fall under the jurisdictional gateway, the claimant has to provide solid evidence to get permission to serve outside England[1413]. In the *Kaefer* [2017][1414] case, the court considered the meaning of 'good arguable case' and explained Section 9 jurisdictional standard, which must be satisfied to serve foreign-based defendants. The court refused to assume jurisdiction because the claimant did not have a sufficiently arguable case to satisfy the jurisdictional gateway under r6.36. In the *Brownlie* [2107][1415] case, Lord Sumption added that the claimant must show 'plausible evidential basis[1416]', to apply the relevant jurisdictional gateway. In the *Zahawi* [2017][1417] case, the court granted permission to serve a libel defendant based in Iran. The court established that the claimants have to convince the court that they have 'plausible argument' applicable to the relevant jurisdictional gateway. The judge must also be satisfied that the claimant has a persuasive case, relative to the defendant if jurisdiction is disputed (see-6.8.2.1). This test of plausibility is the reversion to the civil burden of proof, which is shifted towards the claimants under Section 9 to satisfy the court that England is the appropriate forum to hear the case.

The above analysis defines a twofold test, which all claimants (both local and foreign) must satisfy: (1) A good arguable case that the relevant gateway has been satisfied; and (2) They have the better of the relevant jurisdictional argument. These conditions must be met even before the 'seriousness threshold', and 'defamatory meaning' is considered by the judge (see-7.16). If any of the tests fail, the court will surrender its jurisdiction even if the claimant is a British national. The purpose of Section 9 is to regulate trivial claims and libel tourism for foreign claimants (see-2.13.1). However, its requirements are extremely onerous, even where, the claimant holds property in England. It shows that the bar has been raised too high in respect of very serious online libels originating from defendants outside the jurisdiction against claimants in England[1418].

[1413] Sime, S., (2016), 'A Practical Approach to Civil Procedure', (19th Ed, OUP, Oxford), pp 118.
[1414] *Kaefer Aislamientos SA de CV v AMS Drilling Mexico SA de CV* [2017] EWHC 2598 (Comm).
[1415] *Brownlie v Four Seasons* [2017] UKSC 80.
[1416] The plausible evidential basis is the absolute plausibility test on the basis of the usually limited material available at the interlocutory stage. This is a test related to 'good arguable case' that if the defendant contests the jurisdiction the claimants must have much better argument on the material available.
[1417] *Zahawi v (1) Press TV (2) Press TV Limited* [2017] EWHC 1010 (QB).
[1418] *Cooke v MGN* [2014] EWHC 2831; Bean J noted that S1 has set a very high hurdle for the claimant to clear before he will be deemed to have a cause of action. If this threshold cannot be met, it certainly seems sensible to establish this as early as possible.

7.3.2.: The crossover of S9 versus CPR:

Section 9 obliges the court to consider whether the claim has 'real and substantial connection', with England. This is the same test, previously applied in 'natural forum' under CPR (see-2.17.1). Interestingly, both these tests are applied today, but there is some overlap in their application[1419]. Under Section 9, the court should consider what is the 'natural forum' and determine whether England is "substantially connected" to exercise jurisdiction. The Act does not clarify at what stage Section 9 should be determined, but the crossover of factors with CPR suggests that it is appropriate to seek determination alongside permission to serve out.

Interestingly, if the court is satisfied under Section 9 that it has jurisdiction, the CPR allows the defendant to challenge the jurisdiction on 'forum non-conveniens' or the method of service (see-2.11.6). In the *Romanova* [2015][1420] case, the claimant sought the permission to serve the proceedings for defamation in Moscow. The court decided to exercise jurisdiction under Section 9. The defendant, having acknowledged the service, applied for declarations that valid service had not taken place under CPR r3.6, so that England was not the proper place to exercise jurisdiction. The court had to decline jurisdiction based on 'service of writ' issue.

This crossover may present a hurdle to delivering justice because under Section 9 if England is shown to be the appropriate forum, then the court must assume jurisdiction. Whereas if a proper method of service under CPR r6.36 is not followed, the court's jurisdiction will be considered void. For instance, if a claimant is domiciled in England, under traditional laws, English courts will view that England is an appropriate forum to bring the action[1421]. CPR allows an English domiciled claimant to invoke English jurisdiction (see-6.4.2). Whereas, under Section 9, a claim may only succeed in England, if harm has been done in England (see-2.13.1). It can be onerous for British claimants, who are temporarily domiciled in another country. This is even more difficult when the publication is online and in hardbound. In print publication, even the publisher

[1419] Section 9 is applied for claimants who seek service out of jurisdiction, whereas forum conveniens is available for the foreign defendants to challenge the English court's jurisdiction (see-2.17.1).
[1420] *Sloutsker v Romanova* [2015] EWHC 545 (QB).
[1421] *Schapira v Ahronson* [1999] E.M.L.R. 735.

may not know to whom the publisher has sold copies[1422] because hard copies may be resold and circulated abroad by a domestic wholesaler.

This theme raises this point that British nationals, who spend much of their working lives abroad, will be classed as foreign residents (see-4.6). However, they enjoy reputations in one or more countries abroad as significant as their reputations in England. There are many such people in business, finance, government, academic life, media and entertainment, sport and no doubt other fields of activity. In the *Ames* [2015][1423] case, the court stated that there are differences amongst claimants; those whose reputation is mainly in England, and those wishing to sue foreign publishers in England.

This theme also argues that it should not be part of the function of the court to analyse whether an action is 'properly brought' against the defendant outside the jurisdiction. The method of service of 'writ' should not be a deciding factor to arrive at a conclusion as to whether the claimant can pursue a claim against the defendant. It should be enough if the claimant can satisfy the court that there is a real issue between the victim and the publisher.

7.4.: Alternative methods of service:

The social media communication differs from print media, so the question arises, 'are judges willing to adopt alternative methods of service for social media claims?' Especially, when ordinary methods of service have taken years[1424] or if traditional methods of delivery are not suitable[1425]. The *Abela* [2013] [1426] case acknowledged that if the defendant is based in a country where there is no convention or treaty in place, service can be complicated and lengthy. Hence, an alternative method becomes essential, if the limitation period is about to expire, or the judgment of injunction needs to be enforced overseas.

[1422] *AK Investment CJSC v Kyrgyz Mobil Tel Ltd* (Isle of Man) (Rev 2) [2011] UKPC 7; as per Lord Collins.
[1423] *Ames v Spamhaus Project Ltd* [2015] 1 WLR 3409 paras [44]-[47].
[1424] Service through foreign governments and British consular authorities for example can take many months.
[1425] The Foreign Process Office at the Royal Courts of Justice estimates that the time for service of a claim form in the United Arab Emirates is approximately 8 months.
[1426] *Abela v Baadarani* [2013] UKSC 44.

Service outside of England must follow international standards. CPR r6.40 states that the service of judicial documents abroad must follow:

1. The bilateral treaty of the relevant forum
2. Multilateral conventions
3. The local laws of the receiving country

The *Romanova* [2015][1427] case highlighted the importance of r6.40 because the defendant objected that the claimant did not follow the procedural method of service. The court rejected its jurisdiction despite the Section 9 threshold being satisfied. However, CPR r6.15 (1) is more relevant for online libel because it empowers judges to use their discretion to allow the service of writ using alternative methods. The Bayat[1428] case confirmed this principle, where judge used this discretion to make an order for alternative service. It allowed the service of documents by email to US and Afghan defendants. Interestingly, the electronic method of service is not a permissible method under the US[1429] or Afghan[1430] local laws, or under the Hague Convention. Similar decisions in the cases of *Bacon*[1431] and *Ablyazon*[1432] established that the courts might make such order with retrospective effect by CPR[1433] r6.15 (2).

7.4.1.: Have judges altered the method since 2013?

Post-2013 Act, the judges have used discretion for online libel disputes. The *Brett* [2014][1434] case established that the service of notice of the change by email was valid. In the *Olsen* [2016][1435] case, the court allowed the victim to serve notice of the application to the 'unknown defendants' by way of messages to their Facebook accounts[1436]. In the *Clarkson* [2018][1437] case, Justice Teare asked the claimant to serve

[1427] *Sloutsker v Romanova* [2015] EWHC 545 (QB).
[1428] *Bayat Telephone Systems International Inc and others v Lord Cecil and others* [2011] EWCA Civ 135.
[1429] If the defendant is based in the US, US domestic does not validate a service of court document via email.
[1430] England does not have any 'service treaty' with Afghanistan i.e. the rules of Hague Convention for service out of jurisdiction must be followed.
[1431] *Bacon v Automatic Inc and others* [2011] EWHC 1072 (QB).
[1432] *JSC BTA Bank v Ablyazov and others* [2011] EWHC 2988 (Comm).
[1433] *Abela and others v Baadarani* [2011] EWCA Civ 1571.
[1434] *Brett v Colchester Hospital University NHS Foundation Trust* [2014] EWHC B17.
[1435] *Olsen v Facebook Inc* [2016] NSSC 155; the victims request court for an order requiring Facebook to disclose information to assist in identifying the three anonymous authors of the comments.
[1436] The judge order Facebook to disclose information of anonymous defendant by reasoning that Internet anonymity could not be used to avoid liability for defamatory comments.

the injunction to the defendant via his email. Justice Nicklin[1438] also made a similar order to use electronic means to serve the defendant in the *PML* [2018] case.

On the other hand, r6.15 states that the court can only use its discretion to allow 'alternative method of service' if it is reasonable to do so and the claimant follows the pre-action protocols (see-5.9.1.1). In the *Angela* [2016][1439] case, the claimant sent the service via an email because the 1 year limitation period was about to expire. The judge considered it an abuse of the process because the claimant failed to follow standard procedure. On the other hand, in the *Zed* [2018][1440] case, the judge allowed the claimant to serve the notice of injunction via a text message because the claimant followed the pre-action protocol and the claim would probably succeed at hearing trial.

7.4.2.: The basis for using alternative methods:

The most relevant basis for using alternative service are:

1. **The Defendant is anonymous:** The above cases prove that English judges have shown willingness and innovation under CPR 6.37(5)(b)(1). It is a significant step forward for social media libel, which may eradicate the issue of anonymity in online libel claims. In the *Marashen* [2017][1441] case, the court considered the power to serve proceedings by an alternative method for a defendant outside the jurisdiction. However, this case established that this discretion must be by the Hague Convention. After Brexit in 2019, English judges will have more liberty to use such discretion[1442]. Besides, Article 1 states that it will not apply if the address of the defendant is not known. So, for anonymous defendants, English courts can allow the claimants to serve the claim form to the High Commission of the country, where the defendant's IP address can be located. This would mean the Embassy of the relevant country may also take part in tracing and

[1437] *Clarkson v Person Unknown* [2018] EWHC 417; Warby J granted an injunction in a default judgment in the absence of the defendant.
[1438] *PML v Person(s) Unknown* [2018] EWHC 838 (QB).
[1439] *Anglia Research Ltd v Finders Genealogists Ltd* [2016] EWHC 297 (QB).
[1440] *NPV v QEL & ZED* [2018] EWHC 703; the terms of the order made by Nicklin J, required ZED to disclose his identity and address for service. These are fairly typical requirements in cases where the threat to publish is being made by someone who is hiding behind anonymity.
[1441] *Marashen Ltd v Kenvett Ltd* [2017] EWHC 1706.
[1442] Wherever possible, however, it will still be preferable to serve in accordance with the usual service provisions in CPR 6.40, which include service by a method permitted under the law of the country of service.

bringing the defendant to justice (see-9.3.1). The global use of this method will allow every state to come to a collective/common/multilateral/joint/universal agreement regarding 'anonymous-defendants'. It may cause them to at least to strengthen their laws concerning social media publications.

2. **The defendant is un-known:** Judges can also allow alternative service processes, where the defendant is unknown and the claimant has taken reasonable steps using traditional service (see-7.6). The courts have allowed service of legal documents through electronic means, including Facebook, Twitter and Linkedin[1443]. In the *Jackson* [2017][1444] case, the claimant could not find an address for service. The judge permitted service by electronic means. In the *Zahawi* case, the court ordered alternative service by courier and email. Similarly, in the *Reid* [2016][1445] case, where the defendants left defamatory statements on his Facebook wall, the court adjourned the preliminary hearing and ordered the claimant to serve a notice via email and Facebook.

7.4.4.: Is a modification required?

The 2013 Act does not differentiate between British claimants and the foreign claimants. There is no automatic jurisdiction over British nationals in England unless the harm is suffered in England (see-7.3). A British claimant also faces the same hurdles as a foreign claimant, who may be 'forum shopping'. It adds more expense and complexity at the outset for domestic claimants because they have to overcome the problem of service of writ. With a more lenient approach regarding service of claim forms, the traditional rules can efficiently be applied to social media libel claims. There is a need for a statutory modification to the method of service to make it suitable for digital communication. In a social media context, the alternative method of service is critical because it may be difficult to find the address of the defendant. Service via online means may be the most suitable, cheapest and fastest for the victims. Justice

[1443] Rushton, K., (2012), 'Legal claims can be served via Facebook, High Court judge rules', Media, telecoms and technology editor, The Telegraph; *Knott v Sutherland* [2009] Alta.Q.B.M.; *Axe Market Gardens v Craig* [2008] Axe CIV 485-2676.
[1444] *Pirtek (UK) Ltd v Jackson* [2017] EWHC 2834 (QB).
[1445] *Reid v Dukic* [2016] ACTSC 344.

Warby[1446] also acknowledged that service of writ via the website is sufficient to deem proper service.

This theme acknowledges 'alternative service r6.15', is available for the claimant but only after an initial attempt of ordinary service. The claimant has to attach the evidence to obtain a decision on the alternative method, which can be lengthy and frustrating for an individual whose reputation is in jeopardy. This theme recommends amending this rule to allow service via social media and other electronic means. Besides in the *NPV* [2018][1447] case, the court allowed the service of an injunction by text message, which reinforces the idea proposed in this theme. Hence, service via electronic means should be given statutory authenticity, and the relevant CPR rules updated accordingly.

7.5.: Application of traditional jurisdictional rules:

There has been an increase in the number of libel claims because of social media(see Appendix-1), which involves communication technology via mobile-phone messaging and online forums[1448]. Social media also acts as a news-server; allowing users to post their criticisms of official, local and government policies[1449], sharing information quickly and inexpensively with the online community[1450] (see-2.2). The users cannot be classed as journalists/authors because they are untrained and potentially oblivious to the dangers of defamation claims, whereas journalists obtain the necessary training and publish only authentic news[1451]. Traditional media is institutionalised and relies heavily on legal advice (see-2.10); however the same laws apply to social media users[1452]. In social communication, people may make a mistake or share others' ideas via a

[1446] *Pirtek (UK) Ltd v Jackson* [2017] EWHC 2834 (QB); the claimant, however, will have to follow the pre action protocol for libel to request the court to exercise its discretion under r3.7.
[1447] *NPV v QEL & ZED* [2018] EWHC 703 (QB); this case involves claims for misuse of private information and reveals the innovation adopted by English courts in regards to online communication.
[1448] Angelotti, E. M., (2013), 'Twibel Law: What Defamation and Its Remedies Look like in the Age of Twitter', High Technology Law Journal, Vol 13, pp 430.
[1449] Libel on social media is a commonplace because when the online community is outraged by some event, social media users flood the Internet with hateful and false comments about the alleged perpetrator, feeling empowered by their numbers and anonymity.
[1450] Batza, C., (2017), 'Trending now: The role of defamation law in remedying harm from social media backlash', Pepperdine Law Review, Vol 44, Issue 2, pp 429-476.
[1451] Roberts, H., (1996), 'Can the Internet be regulated?', Research paper35; https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP9596/96rp35 [Assessed 4th April 2018].
[1452] *Walsh v Latham* [2014] SCV 251041, WL 618995; online communication does not justify the application of a different defamation framework.

webpage[1453] but using traditional rules; they will be held liable[1454]. Justice Courtney[1455] established that people could be sued for their defamatory comments or those, which they allow others to make on their social media pages.

7.5.1.: Can traditional rules be applied to online libel?

Traditional English law is a combination of common law[1456] and statutes[1457]; however, no common law[1458] exists for social media abuse/offences. Courts have to implement existing laws to apply to online communication[1459]. Judges have used traditional principles to regulate online defamation[1460], which at times, raised the issue of certainty and harmony. There are few areas of online libel which have confused other common law authorities as well:

In the *Gayle* [2017][1461] case, the Australian judge struggled to determine whether the actual malice standard required for online defamation of celebrities was applicable. It has led to online defamation suits being brought by public-figures to the defence-friendly[1462] forums[1463].

[1453] As per Kirby J in *Dow Jones v Gutnick* [2002] HCA 56.
[1454] There is no mechanism to identify at which stage the shared comments become defamatory because once a defendant is warned that the comments are defamatory and he remove it, the damage might still have done.
[1455] *Wishart v Murray* [2015] NZHC 3363; the publisher is liable for direct, vicarious, incitement-of-defamation and endorsement/adoption as separate causes of action for social media publication.
[1456] The case law in which publicly decided cases (whether interpreting statutes or building on previous case law) form part of a body of law, known as the common law.
[1457] The 2013 Act did not repel previous Acts hence the precedents of common law can still be applied today .
[1458] Judges decide what the law is when there is no other authoritative statement of the law. A decision of an appellate court binds future decisions of the same appellate court on similar facts, and binds all lower courts reviewed by that appellate court until there is another authoritative statement of the law (by the legislature or a higher court), known as the doctrine of precedent.
[1459] *Ave Point v Power Tools* [2013] 981 W. D. Va. 496; Zitter, J., (2000), 'Annotation, Liability of Internet Service Provider for Internet or E-mail Defamation, A.L.R., Vol 5, Issue 84, pp 169.
[1460] Elkin, J., (2000), 'Cyber-smears: Dealing with Defamation on the Net, BUS. L. TODAY, Vol 9, pp 22; the courts have held that the laws of defamation undoubtedly apply to false statements made over the Internet.
[1461] *Chris Gayle v Fairfax Media* [2017] NSW SC; Justice Lucy McCallum found malice on the part of Firfox and in the absence of any defence decided that the articles were published for an improper purpose.
[1462] Cippettini, V., (2009), 'Modern Difficulties in Resolving Old Problems: Does The Actual Malice Standard Apply to Celebrity Gossip Blogs', Seton Hall J. Sports & Ent. L., Vol 19, pp 221.
[1463] It is easier for US-based celebrities to sue for defamation in the English courts because in the UK actual malice is not a requirement. Many public figures including Tom Cruise, Kate Hudson, Britney spears, are among the stars who have successfully pursued claims in the UK; Sweat & Maxwell (2006), https://www.sweetandmaxwell.co.uk/about-us/press-releases/270706.pdf [Assessed 18th May 2018].

1. In the *Trump* [2017][1464] case, the US judge concluded that the tweets amounted to 'non-actionable opinion' even though the harm to reputation was severe. On the other hand, unintentional harm caused via social media publications is an actionable libel (see-7.15). It also demonstrates political influence because if an ordinary user has published 'opinions', it could be actionable because it caused harm (see-7.16).

2. The New Zealand courts are still struggling to choose between the 'single versus multiple' rule and when a hyperlink gives rise to liability[1465].

3. In the *Sioux*[1466] case, the judge pronounced that the basic conventional rules are ill-suited for resolving modern communication issues.

4. In a landmark Swiss court ruling in 2017, the judge fined a Facebook user who 'liked' a post which accused an animal rights activist of being anti-Semitic and racist[1467]. It is arguable that by just 'liking' a post, a user may become a publisher (see-7.18) whereas Google, being a content provider, is immune from liability due to a lack of editorial control (see-7.8).

In common law, those with control over or who facilitate or consent to a publication become liable for contributing to publication (see-2.11). That is why editors, newspaper proprietors and printers have been traditionally held as primary publishers alongside journalists (see-5.9.1.5). The question arises 'do social media users enjoy the same editorial controls[1468]?' There is a recent precedent that: 'When a search is carried out via Google, the human input from the content provider is zero' (see-7.18). Following this precedent, when a user likes a comment he does not add anything but likes or shares it so he must be immune in the same way as service provider. Blue J[1469] also held 'that a

[1464] Jacobus v Trump [2017] No. 153252/16, WL 160316.
[1465] *Wishart v Murray* [2015] NZHC 3363.
[1466] *Sioux Transportation v XPO Logistics* [2015] W.D. Ark. 20 No. 5; the publishers of online messages can be held accountable for them in that very traditional physical place known as a courthouse: The transmission of computer files over the internet is no longer an accurate measurement of a website's contact to a forum state.
[1467] Hall, M., (2017), 'Swiss court convicts man for 'liking' defamatory Facebook post in landmark ruling', available online https://www.telegraph.co.uk/news/2017/05/30/swiss-court-convicts-man-liking-defamatory-facebook-post-landmark/ [Assessed 16th July 2018].
[1468] Eady J in *Google v Trkulja* [2016] [2016] VSCA 333; emphasised that Google had lack of control over the entered terms .
[1469] *Duffy v Google* [2015] SASC 170.

defendant can only ever be a publisher if the defendant authorises or accepts responsibility for the publication'. This theme submits that there is a need to modify the basic principles for the issues of 'likes', 'shares' or 'emojis' because if the courts want to prosecute people for 'likes' on social media[1470], England may need to triple the number of judges for cyberspace claims[1471].

7.5.2.: Should traditional rules be applied to social media?

The above shows that libel is a 'grey area' in various jurisdictions and raises the argument of whether the traditional methods are suitable for modern communication. On the other hand, traditional principles are stretching its comprehensive view of the 'cause of action' to digital contexts (privacy, character assassination, data breach). Over time, this may be seen to relate less clearly to the protection of reputation as traditionally understood, and more to statutory data protection with its conceptual roots lying closer to privacy law[1472]. The argument is, if the cause of action, which is more confusing than jurisdiction, can be applied to online libel than other principles can also be applied. There exists inconsistency in English court's decisions post-2013 Act (see-7.7, 7.13) but they have managed to cope with the latest technology by using traditional laws. In the *Hadford*[1473] case, the issue was raised that as there has been no change in defamation law, it applies to both print and online media. The law must distinguish between defamatory comments made online or in print: Both are equally unlawful[1474].

The above case laws show that the judges take regulating online speech very serious because they are willing to take on board complaints about (casual) social media posts (see-7.5.1). There is a mistaken belief that traditional rules are not applicable to social media and the users can publish whatever they want, considering themselves to have

[1470] Practically everything is a publication – because it gives rise to a cause of action. Therefore, a tweet or indeed a re-tweet or share on Facebook can technically be covered by the traditional principles of defamation.
[1471] Goldman, E., (2018), 'Emoji's and the Law', Santa Clara University, Legal Studies Research Paper, Vol 8, issue 17, pp 58.
[1472] Erdos, D., (2014), 'Data protection and the right to reputation: Filling the 'gaps' after the Defamation Act 2013', Cambridge Law Journal, Vol 73, pp 536 – 569.
[1473] *Hadford & Folwer v Rolling Stone* [2017] 16-2465 (2d Cir.).
[1474] Jackson, A., (2009), 'Cyberspace…The Final Frontier: How the Communications Decency Act Allows Entrepreneurs to Boldly Go Where No Blog Has Gone Before', Oklahoma Journal of Law and Technology, Vol 5, Issue 1, Article 4.

impunity[1475] (see-2.10.2). The court ratified this 'misconception' in the *Rayney* [2017][1476] case. Judge John awarded maximum damages and warned that people who post messages on social media sites should be very careful. Similarly, the *Pritchard* [2016][1477] case, sets a new standard for Facebook users who publish comments made by others or who post comments that then attract a defamatory response. If the liability is extended to the friends/followers of the users, it can have significant repercussions concerning the uneasy balance between the right to reputation and freedom of expression. This theme demonstrates that the balance is tipping in favour of reputation and departing from the concept of freedom of speech. It is yet to be established that to what extent this traditional concept of freedom of speech based on a jurisdictional world can be applied to a digital world with no boundaries. It may not be possible to apply the traditional approach regarding freedom of speech to social media communication unless the concept of jurisdictional libel is harmonised or modified for cyberspace (see-7.21).

7.5.3.: Is an amendment required?

Judge Gibson[1478] gave the reason the law has failed to adapt to social-technological communication because there is no time limit on suing for online publication. Previously, the limitation period re-started if the content was re-published[1479]. A 12-month limit applies to print publications (see-2.11.6); however, Section 8 simplified this issue with the single publication rule (see-2.11.3, 7.13). This theme agrees with the judgment in the *Murphy* [2017] [1480] case, that online libel must be distinguished from traditional media because of its potential to damage the reputation of individuals and corporations[1481], its interactive nature, its potential to be taken at face value, and its

[1475] Phelan, D., (2016), 'Facebook case shows social media has same legal risks as print'; online Url: https://www.irishtimes.com/news/crime-and-law/facebook-case-shows-social-media-has-same-legal-risks-as-print-1.2689615 [Assessed 4th April 2018].
[1476] *Rayney v The State of Western Australia* [No9] [2017] WASC 367.
[1477] *Pritchard v Van Nes* [2016] BCSC 686; Justice Saunders extended the liability of individuals not only for their Facebook posts, but how their friends react to these posts, whether through comments, sharing or otherwise distributing the post.
[1478] Whitbourn, M., (2018), 'NSW to review defamation laws as social media claims soar'; available online https://www.smh.com.au/national/nsw/defamation-laws-social-media-rebel-wilson-nsw-20180321-p4z5e4.html [Assessed 4th March 2018].
[1479] *Dods v McDonald (No 2)* [2016] VSC 201.
[1480] *McNairn v Murphy* [2017] ONSC 1678.
[1481] *Zall v Zall* [2016] BCSC 1730; the court found that the nature and reach of a website compounded the damage done more than a personal blog or website.

absolute and immediate worldwide ubiquity, anonymity[1482] and accessibility (see-2.5.1.2).

Nevertheless, the above does not prove that traditional laws cannot be applied to social media, although some modification is required in the application of traditional laws to social media libel case laws. For instance, to control the massive cost of starting libel proceedings (see-7.11), the claimants should be allowed to start proceedings in the Magistrates Court, which is cheaper, easier to access and can determine preliminary issues quickly. Such innovation in traditional laws will help victims to vindicate their position in society because it is not just about compensation but protecting their reputation by removing 'alleged material' and preventing republication.

7.6.: Proceeding in the absence of the defendant:

The courts are unable to exercise jurisdiction over a foreign-based defendant[1483] if he is physically not present in England (see-2.3.1, 6.9). This problem is propagated by online communication because the defendant can be an anonymous user or hidden in the dark-web[1484]. Anonymity is a big challenge because chat rooms, message boards and websites like Facebook and Twitter[1485] do not require users to provide their real names, which can make finding someone a real challenge (see-2.10.2). These sites do not make its user information available to protect their privacy[1486]. It creates a cyclical problem because anonymous users think they are protected (see-5.9.3). They write whatever they want and continue to defame[1487] thinking that they are anonymous (see-2.10, 7.4). So what happens when a victim cannot locate the defamer, or the defendant refuses to respond?

[1482] *Olsen v Facebook* [2016] NSSC 155; Justice Michael Wood decided that anonymity is not available in print media. It is another social media feature which demands modification in existing defamation laws.
[1483] Collins, (1972), 'Some Aspects of Service out of the Jurisdiction in English Law' 7LA,ICLQ, Vol 21, Issue 4, pp 656-681.
[1484] Section 5 allows the claimant to bring an action against ISPs; however, it is beyond the scope of this thesis.
[1485] Social media sites, group forums, and message boards do not require a user to input their actual name.
[1486] *Delfi AS v Estonia* [2015] ECtHR 64669/09.
[1487] Phelan, D., (2016), 'Facebook case shows social media has same legal risks as print'; online Url: https://www.irishtimes.com/news/crime-and-law/facebook-case-shows-social-media-has-same-legal-risks-as-print-1.2689615 [Assessed 4th April 2018].

7.6.1.: Decisions for anonymous defendants:

The courts have the power to give default judgment[1488] if the defendant is not present (CPR r12.3) or he decides not to attend, despite a 'proper notice' being served[1489] (CPR r12.4). The judge has to make the following considerations where one of the defendants is un-known[1490]:

7.6.1.1: The issues the court considers:

1. Can the claimant proceed against a person unknown
2. Can the matter be processed in the absence of the defendant (or second defendant)
3. Can a judgment be entered
4. Should an award of damages be made
5. Should an injunction be granted

7.6.1.2.: Alternatives:

In social media communication, it is imperative that content/blog/statement/post can be created, shared, authored or re-posted by a user who is not easily identifiable (see-2.10.2). The extremely lax verification and regulatory mechanisms utilised by user-generated content platforms and darknet anonymous services help preserve anonymity (see-2.10.4). There are following alternatives available for a claimant:

1. Norwich Pharmacal Order (see-5.9.3.1)
2. John Doe action (see-5.9.3.2)

[1488] CPR r12.1 defines 'default judgment' as a judgment without trial where a defendant (a) has failed to file an acknowledgment of service; or (b) has failed to file a defence.

[1489] Section 8 of the 1996 Act enables a claimant to seek judgment and summary; the case of *Smith v unknown defendants* [2016] EWHC 1775 is a useful reminder for the claimants that they can use S8 of the 1996 Act to seek the removal of defamatory online statements even when defendant is anonymous or un-identified.

[1490] *North Warwickshire Borough Council v Persons Unknown* [2018] EWHC 1603; Judge Worster granted an injunction in the absent of the defendant and decide the case against 'person unknown'.

If the claimants rely on any of the above orders, litigation becomes infinitely time-consuming and expensive because the court has to take statutory steps to first identify the un-known defendant and confirm their identity.

7.6.1.3.: The availability of relief:

CPR rules and Section 8 of the Defamation Act 1996 allows a court to enter into a default judgment against an unknown defendant. In the case of *Smith* [2016] and *Wilson* [2015] the court proceeded against unknown defendants (see-7.6.3). The decisions against unknown-persons have been acknowledged for a considerable period[1491]. Moreover, every social media libel case will have unique merits and circumstances. Regardless, a defendant is unknown, the merits of a case must still be proven. If the judge finds that the claim is dubious or defences are obvious, he may not grant any relief.

Justice Warby[1492] stated that the person unknown must be described in the claim. He can be identified by the description with sufficient certainty (see-5.9.1.2). He concluded that the court had jurisdiction to grant interim relief and final relief against persons unknown, including a summary judgment basis under CPR r24.2[1493]. The relevant procedural safeguards must be respected; and the unknown defendants must be duly served and informed about any application for interim or final relief[1494].

In the *Jones* [2018][1495] case, the judge granted an injunction because the defendant did not appear and he was not represented. The court judged the steps taken by the claimant to serve the defendant and decided the case. Once the court provides a summary judgment in the absence of the defendant, he will not be able to challenge the court's

[1491] *Bloomsbury Publishing Group Plc v News Group Newspapers Limited* [2003] 1 WLR 1633.

[1492] *Brett Wilson LLP v Persons Unknown* [2015] EWHC 2628; Warby J commented that the summary disposal procedure under DA 1996, S8 and S9 has been little used to date. It is most suitable mechanism for online communication cases where a final injunction is needed as promptly and cost-effectively as possible.

[1493] *Fox v Graham Group Ltd* [2001] CHD 26; where a party fails to appear at the hearing of an application the court may precede in their absence. Neuberger J stated that CPR 23.11 grants a power that must be exercised in accordance with the overriding objective.

[1494] *Smith Kline Beecham v GSKline Ltd* [2011] EWHC 169; Justice Arnold stated that if the defendant has sought an adjournment, default judgment cannot be granted.

[1495] *Jerome Jones v Birmingham City Council* [2018] EWCA Civ 1189; Lord Justice Irwin rejected the arguments of Art 6 – right to free trial and gave a default judgment in absence of defendant.

jurisdiction[1496]. Additionally, the court can order the service providers to reveal the defendant's identity (see-5.9.3); however, it may not be possible where the defendant is using the dark web or has changed his IP address by using a VPN service (see-2.4.2), or the data is transferred to other jurisdiction (see-2.3.2).

7.6.2.: Judge's discretion in social media libel:

The 2013 Act does not make any provisions for identifying anonymous internet users. However, English judges have used traditional powers to proceed in the absence of the defendants. Interestingly, Section 12 of the Human Rights Act 1998 prohibits a court from granting relief which infringes a defendant's freedom of expression if he is neither present nor represented (see-6.8, 7.19.1). Then again, CPR allows the courts to use its discretion if the claimant has taken all practicable steps to notify the defendant[1497] (see-7.6.1). In the *Novartis* [2014][1498] case, it was held that the court must exercise considerable caution before concluding that it is appropriate to proceed in the absence of a litigant. In the *Sloutsker* [2015][1499] case, the court noted that CPR r12 grants discretion to provide default judgment, but a judge should only exercise it if compatible with the overriding objective. Equivalently, in the presence of any compelling reasons the court can use its discretion. In the *Middleton* [2016][1500] case, the court found the compelling reason that the defendant was in possession of the claimant's iCloud account containing private photographs.

The court in the *Jackson* [2017][1501] case reinforced this criterion: (1) The applicant has taken all reasonable steps to notify the respondent or (2) there are compelling reasons that the respondent should not be reported. In the *Smith* [2016][1502] case, the defendant refused to attend the hearing. The claimant requested a default judgment in the

[1496] *Robins v Kordowski* [2011] EWHC 1912 (QB); Tugendhat J held that the jurisdiction to grant final judgment is available if the court entered default judgment for damages to be assessed and on a summary basis.
[1497] This discretion under CPR is in itself problematic because if the respondent's identity is unknown, what reasonable steps a claimant can take to serve to the respondent.
[1498] *Novartis Pharmaceuticals UK Ltd v Stop Huntingdon Animal Cruelty* [2014] EWHC 3429 (QB).
[1499] *Sloutsker v Romanova* [2015] EWHC 545 (QB).
[1500] *(1) Pippa Middleton (2) James Matthews v Persons Unknown* [2016] EWHC 2354 (QB); the court granted an injunction against unknown defendant because the claimants iCloud account data was hacked – it becomes a serious issue to be tried.
[1501] *Pirtek (UK) Ltd v Jackson* [2017] EWHC 2834 (QB).
[1502] *Smith v Unknown Defendants* [2016] EWHC 1775 (QB).

defendant's absence because the seriousness criterion was satisfied. Justice Green established that in the absence of the defendant the judge must be satisfied that:

1. The defendant had received proper notice of the hearing and the matters to be considered at the trial
2. The available evidence as to the reasons for the litigant's non-appearance, supplied a reason for adjourning the hearing

The judge can also give default judgment if the defendant fails to file a notice of defence (r12.1). In the *Conquest* [2015] [1503] case, the court entered into default judgment because the defendant did not intend to defend the Twitter libel claim. In the *Reid* [2016][1504] case, the defendant expressly refused to take part in the proceedings so Mossop J, trialled the claim in his absence. The judge used this discretion in the *Wilson* [2016][1505] case because the defendant failed to appear without giving a reason. This is an important decision because in social media libel it may be evident that one or two defendants may be hidden or choose not to attend the hearing. If the defendant is unfit and unable to participate, a written explanation of medical reason/GP note may be enough to adjourn the hearing[1506] (see-2.12.3).

The decision in the *Smith* [2016][1507] case has opened the door to unlock potential anonymity in online defamation. In this case, the unknown defendant had responded to pre-action documents online before the first hearing but was absent to protect his identity. The judge awarded a default judgment, as he was satisfied that the court had jurisdiction to rule on the case. It may be a welcome judgment for content providers, who may become hosts to defamatory material (see-2.10.4).

7.6.3.: Should judges proceed for anonymous defendants?

The right to 'fair trial' is central to the British justice system (see-6.5.1). It is the constitutional right of an individual to be present at their trial hearing (see-6.8). Section

[1503] *Bertwistle v Conquest* [2015] QDC 133.
[1504] *Reid v Dukic* [2016] ACTSC 344.
[1505] *Brett Wilson LLP v Persons Unknown* [2016] EMLR 2 [14]-[16].
[1506] *Smith v Royal Society for the Prevention of Cruelty to Animals* [2017] EWHC 3622 (Admin).
[1507] *Smith v Unknown Defendant, Pseudonym 'Likeicare' & Ors* [2016] EWHC 1775 (QB).

12 (2)[1508] prohibits the court from using CPR discretion unless the respondent is present or represented[1509]. This theme raises the question that if the claim is for an injunction to stop defamatory material from further publication, it may not affect a defendant's statuary rights to be processed in his absence. Besides, the defendants have the right to challenge the court's decision by jurisdiction and forum conveniens (see-6.8.2.1). This means the claimant should be given the right to request default judgment because his reputation has been harmed. If an injunction is not granted, defamatory content can be published and republished, which can further damage the victim's reputation. Also, if the defendant is not physically present or holds no property in England, he may choose to ignore court orders. The massive costs and complexities in starting proceedings against a foreign publisher mean that the defendant must be discouraged from wasting the court's time.

This theme also recommends modification in the libel laws. The claimants should be allowed to request the court to stop the publication of alleged material before the start of the preliminary hearing. It can be simplified by making an online judiciary for social media, where the claimants can request an initial assessment of alleged contents. The claimants would not have to take traditional preliminary action and could simply initiate a process via social media where their reputation is being harmed. These online units can make the initial assessment of the issue and then forward the case to the appropriate court for further hearing. This will save the cost of bringing proceedings and may also save valuable court time in satisfying the requirements of jurisdiction and pre-action protocol issues.

7.7.: Jurisdiction under S9:

The 2013 Act brought many internet-friendly reforms in the law[1510]. The most conflicting change relates to Section 9 because it raised the bar for claimants concerning

[1508] If a default judgment granted, might affect the exercise of the Convention right to freedom of expression.
[1509] Interestingly, even if a defendant fails to show up to defend the case, the merits of a case must still be proven. If judge finds that the claim is dubious or defences are obvious, he may not grant any relief.
[1510] *Delfi v Estonia* [2015] ECHR 586; Section 5 provides immunity to secondary publishers of defamatory statements, including content hosts and service providers.

jurisdiction[1511]. In deciding appropriate jurisdiction in online libel, along with Spiliada-principles[1512], the court has to consider (see-4.7):

1. The extent of the claimant's reputation in England
2. The extent of publication in England compared to publication abroad
3. The location of the parties and witnesses

Michael Tugendhat[1513] noted that Section 9 made no reference to different categories of the claimant or to any specific link to England that a claimant might have or lack. It applied as much to a claimant who had never resided in England as to one who was resident or domiciled there[1514]. In the *Huda* [2017][1515] case, the judge noted that, where it applies, the effect of Section 9 is to subtly change the test for libel claims.

7.7.1.: The purpose of S9:

The English parliament declared[1516] that Section 9 is designed to address 'libel tourism'. It relates to the courts readily accepting jurisdiction merely because a claimant frames his claim to focus on damage sustained in England (see-2.17). There may be situations in which claims against non-EU domiciled defendants arising out of their foreign publications will go ahead in the English courts, even under Section 9. This mainly occurs where an international publication was principally produced or distributed in England as well as in other jurisdictions.

Claims in defamation may essentially be brought against non-EU defendants by their presence in the territory (either physical presence of an individual or a fixed place of business for corporations)[1517] or on the basis that the tort occurred in England. For jurisdictional purposes, this might again mean either the defamatory material being

[1511] Collins, M., (2014), 'The Law of Defamation and the Internet', (1st Ed, Oxford Uni press, UK), paras 25.51 to 25.89.
[1512] *Spiliada Maritime Corp v Cansulex Ltd* [1987] A.C. 460.
[1513] *Ahuja v Politika Novine I Magazini D.O.O.* [2015] EWHC 3380 (QB).
[1514] The effect of Section 9 is to oblige the court to consider all the jurisdictions where the defamatory statement had been published. To determine whether the domestic jurisdiction was clearly the most appropriate place in which to bring the action.
[1515] *Huda v Wells and Ors* [2017] EWHC 2553 (QB) at [84]-[85].
[1516] The Defamation Act 2013; Explanatory notes http://www.legislation.gov.uk/ukpga/2013/26/notes/data.pdf (Assessed 14th March 2018), para 10 01 to 10.31.
[1517] *Maharanee of Baroda v Wildenstein* [1972] 2 QB 283; *Adams v Cape Industries* [1990] 2 WLR 657.

published in England or the damage to reputation occurring in England[1518]. It may also include consequential loss being suffered in England[1519]. If English courts are the most appropriate place for the litigation, these claims may include damages arising out of publication in England, but also around the world[1520]. Similarly, analysis can be conducted if libel is published via a website. Jurisdiction can be exercised even though the defendant's website is located in the foreign country, if the republication of the defamatory material is in England.

If the claimant has a reputation in England, English courts will have to assume jurisdiction under Section 9 even though defamatory content is posted elsewhere.

7.7.2.: CPR jurisdiction versus S9 (2):

Section 9 affects the claimant's ability to bring a defamation claim in England. If a statement is published online and read in England by a relatively small number of people, whereas it is read in other countries by a much more significant number of people, then English courts will not have jurisdiction to hear the claim (see-2.13.1). It also includes where the publication is made/read/uploaded/downloaded in England.

Under traditional rules, a claimant had to show a serious issue to be tried on the merits and a good arguable case (see-7.3). The question of whether England is the most appropriate jurisdiction becomes relevant at the discretion stage. However, with Section 9 in place, a judge cannot reach the point of considering whether to grant permission to serve out (and the questions of discretion that would apply to that decision) unless Section 9 (2) is satisfied. It implies that England must be 'clearly the most appropriate forum to bring an action'. If Section 9 (2) threshold is satisfied it will be inappropriate for the court to refuse permission to serve out. If this threshold is not satisfied, English courts may not have jurisdiction for English nationals[1521]. This is in contrast to Australia, the US and EU, who assume authority for their citizens. The *Coleman*[1522] case proved that the Irish courts would have jurisdiction if the defendant was domiciled in Ireland, or the imputation took effect within Irish borders. Similarly, in the *Jackson*

[1518] *Berezovsky v Forbes* [2000] UKHL 25.
[1519] *Cooley v Ramsey* [2008] EWHC 129; *ABCI v Banque Franco-Tunisienne* [2003] EWCA Civ 205.
[1520] Duncan & Neill (2015), 'The law on Defamation' (4th Ed, LexisNexis, UK), para 9.03 to 9.04.
[1521] James and McMahon, (2013), 'Blackstone's Guide to the Defamation Act 2013', (1st Ed, Oxford University Press, UK), pp 32.
[1522] *Coleman v MGN* [2012] IESC 20; the court decided under Section 11 of the Irish Act 2009.

[2018][1523] case, Paddy Jackson launched a defamation action against a senator for social media comments he posted after the acquittal in Ireland.

Section 9 overrides the orthodox position in common law - each actionable publication constitutes a separate tort, which must be considered separately when deciding if the English court has jurisdiction to hear that claim[1524]. The justification for this rule is that it is the alleged publication in England by the defendant that justifies the English court to exercise jurisdiction regarding that publication. It is abusive for a claimant who has obtained jurisdiction over a foreign-domiciled defendant on that basis to then subject him to claims for foreign publication(s) for which the court would not otherwise have accepted jurisdiction.

7.7.3.: Is S9 suitable for social media libel?

Judge McIntyre[1525], in a YouTube defamation claim, acknowledged that social media had affected many ordinary people, who are defamed in publications, which are accessible to readers all over the world. Some private individuals are subjected to defamations that can be read/viewed/downloaded via social media by millions globally[1526]. The requirement of Section 9 (2) for ordinary victims to gather the necessary evidence relating to all the jurisdictions where the defamatory statement has been published might interfere with the claimant's right of access to the court (see-6.5.1, 6.8). It becomes unfair to the victim who may not be a man of substantial means. He may not have access to worldwide legal and technical professional advice.

Section 9 (2) treats all claimants equally, either British or foreign. It would be a better option to use for non-EU claimants, who are not domiciled in England[1527]. Nevertheless, it does not purport to change the rules under the Regulation and would be ineffective as a matter of EU law if it tried to do so. The *Jackson*[1528] case established that EU-

[1523] *Jackson v ROI Senator* [2018] http://www.citybelfast.com/paddy-jacksons-lawyers-launch-defamation-against-roi-senator/[Assessed 20th August 2018].
[1524] It was re-affirmed by the House of Lords in *Berezovsky v Michaels* [2000] 1 WLR 1004.
[1525] *Scali v Scali* [2015] SADC 172.
[1526] *Beynon v Manthey* [2015] QDC 252.
[1527] This section puts barriers in the way of claim against persons domiciled in states, which are not signatories of the Lugano Convention and not EU Member States. Using a colloquial expression, one could describe the policy behind this section as 'dodgy'.
[1528] *Owusu v Jackson* [2005] QB 801 C-281/02; any EU claimant can sue the defendant 'as of right' – wherever the claimant is situated or any other EU state for the damages suffer throughout EU.

defendants can be sued 'of-right' so Section 9 cannot be applied to any claims where jurisdiction has been taken under the Regulation or the Lugano Convention (see-2.7.1). This was reaffirmed in the *Page* [2015][1529] case, which concluded that the proceedings might be brought against any English domiciled defendant for any defamatory act published by them anywhere in the world.

7.7.4.: Is modification to law required?:

Let us understand the application of Section 9 in a social networking example. TripAdvisor.com is a website, which is domiciled in the US but accessible globally. Any unidentified/anonymous user can start a review about any business, which then allows further comments to be added. British businesses are also reviewed on TripAdvisor so anybody can post a bad review and damage the reputation of a small business, which may lose its substantial revenue. However, Section 9 states that a small company damaged by an anonymous user has to sue in the US courts because TripAdvisor is based in the US. Practically, it means that the owner of the business has no remedy.

This theme argues that in most circumstances, especially in social media, where all the family members, relatives, and friends are linked to the claimant. It is not just the claimant who will face difficulty under Section 9 because of his global reputation. The claimant may be part of an elite family business in another country, but owns property in England. These businesspersons add to the economic benefits so it may also be in the public interest that their reputation is not unlawfully damaged. There is already criticism that English defamation law does not protect businesses registered in England[1530]. This theme recommends modification in the law: There should be a by default jurisdiction for English claimants and Section 9 should only apply to the foreign claimants, who may be forum shopping.

[1529] *The Bussey Law Firm PC v Page* [2015] EWHC 563; the court awarded damages because publication was calculated to cause serious harm to the claimant.
[1530] *McKeogh v John Doe* [2012] IEHC 95.

7.8.: Jurisdictional uncertainty in cyberspace:

The 2013 Act changed traditional concepts, which have been reasonably well established in common law, including 'jurisdiction', 'single publication', 'Thornton threshold', and 'real and substantial tort'. Replacing the common law position with a statutory scheme created uncertainty[1531] because the extent to which the detailed principles developed under the old law still apply is not well defined. The question of which disputes can be heard in English courts is quite distinct from what is unlawful under English law. For instance, an English court can entertain an action in respect of overseas publication[1532] (see-7.3). Alternatively, disputes in a foreign court over publication in England may also apply the English governing law. The logic behind the approach adopted in the 2013 Act to address issues through substantive or jurisdictional measures is unclear (see-7.7, 7.16).

David Post[1533] holds the view that whenever the world of cyberspace with no boundaries collides with the world of jurisdiction with physical limits, it causes uncertainty in the application of the law[1534]. This uncertainty is felt sharply in the area of online libel law, which is further extended by social media (see-2.5.1.2):

1. It creates a predicament for traditional jurisdictions because it uses connecting-factors[1535] to assume jurisdiction; whereas, in digital communication, it is difficult to ascertain nationalities/domicile/physical presence of the litigants.

2. It provides anonymity which makes the identification of the defendant difficult. It may be possible to understand the existence of specific content and its impact

[1531] Tench, D., (2014), 'Defamation Act 2013, A Critical Evaluation: Part 1, General Concerns', International forum for Responsible media blog, Inforrm's blog; www.inforrm.org [Assessed 22nd July 2018].
[1532] Subject to the substantive law of the country of publication.
[1533] Post, D.G., (2017), 'How the Internet is making jurisdiction sexy (again)', International Journal of Law and Information Technology, Vol 25, pp 249–258.
[1534] Defamation law is already struggling to maintain an appropriate balance between free press, individual privacy, protection of reputations and freedom of expression.
[1535] Connecting factors are physically related to a certain jurisdictional area: Nationality, domicile, mutual consent and lex rei sitae are regarded as determining factors in traditional jurisdictional principles.

on others, but it may be impossible to identify the user who uploads such content[1536].

3. Unrestricted and gratis availability of social sites makes it an open and independent system to every individual because it does not require users to provide their (accurate) identification to access these websites (see-7.6). This was acknowledged in the *Kelly* [2016][1537] case, that relations between countries and the users of social media are incredibly fragile.

4. The different and contradictory approaches, adopted by courts in developed countries[1538] including the EU, Australia, Canada, the US and the UK, also engender this uncertainty/inconsistency to online defamation[1539]. Kourakis CJ[1540] highlighted this complex jurisdictional uncertainty problem by concluding that a new cause of action arises whenever Google's search results are published. Google was held liable for defamation in Australia whereas Google would have immunity in the US. Similarly, the 2013 Act abolished the multiple-publication rule, so this case would also be decided differently in England (see-2.11.1).

7.8.1: Uncertainty since the Defamation Act:

A different type of uncertainty emerged with the 2013 Act about the accessibility and downloading. The worldwide accessibility of social media content does not turn every online publication into an international publication if it is not downloaded globally. There is no clarification of how much downloading is required to consider it published. In the *Berg*[1541] case, the court decided that it is not possible for an online publisher to geographically restrict publication on the internet. With regards to damages and

[1536] Joyce, D., (2017), 'Data associations and the protection of reputation online in Australia', Big Data & Society, Vol 4, Issue 1, pp 10.
[1537] *Kelly v Levick* [2016] QMC 11.
[1538] With the rapid advancement of technology, the development of online defamation law has been left far behind, with little to no development. Courts have struggled to decide whether the standards and rules applied in traditional defamation cases apply to social media.
[1539] Shaw, S.R., (2017), 'There is no silver bullet: Solutions to Internet jurisdiction', International Journal of Law and Information Technology, Vol 25, pp 283–308.
[1540] *Google Inc v Duffy* [2017] SASFC 130.
[1541] *Macquarie Bank Limited & Anor v Berg* [1999] NSWSC 526; Simpson J was adamant that an interlocutory judgment does not pre-empt rights and one seeking to restrain a party from publishing matter would 'unduly override the rights of publisher and pre-empt the resolution of legitimate issues.

enforceability, a global injunction to stop defamatory material means the superimposing of English law is beyond its sovereign boundaries[1542] (additionally, it could not be enforced in the jurisdiction where some big data companies are based because of immunity). Even where the claimant only seeks monetary compensation, the courts face a considerable challenge in quantifying which part of the damage has been caused by the accessibility of the content within their jurisdiction.

The occurrence of a tortious act is sufficient basis of jurisdiction[1543], but it becomes more complicated in social media due to the difficulty in determining the place of tort. The problem arises when the defendant is anonymous (see-2.10.2). Current technology cannot efficiently locate online users[1544], for example, if he commits the tort on a public computer[1545], it is futile to locate the computer[1546]. In this situation, the courts can assume personal jurisdiction by allowing service to the Embassy of the defendant's domicile state (see-7.5). This theme finds that banning anonymous and pseudonymous posts[1547] may offer consistency because the defendant would be traceable. If traditional laws[1548] are applied to social media, then the immunity of ISPs and content providers becomes challengeable. Hence holding ISPs liable as the primary publisher may quicken the process because they may show more willingness to regulate/control online communication.

7.8.2: Uncertainty under S8:

Traditionally, republication of a defamatory statement constitutes a fresh cause of action. To maintain this position for social media libel may not be a rational thing to do

[1542] Kohl, U., (2000), 'Defamation on the Internet: A duty free zone after all? Macquarie Bank & Anor v Berg', Sydney Law Review, Vol 22, Issue 1.

[1543] Modern international law adopts the jurisdiction rational loci as the primary principle in determining jurisdiction whereas the border lines between different countries and the concept of "territory" have vanished in cyberspace.

[1544] *Applause Store Productions Ltd and Firsht v Grant Raphael* [2008] EWHC 1781 (QB); a defamatory fake Facebook profile was created a computer with defendant's IP address i.e. using a computer at the flat where he then lived. He denial responsibility but the judge held him liable for putting up the false profile.

[1545] The Internet cafe, library or information centre; with the exact IP address the relevant Embassy can be involved but in the dark web the users can rotate IP addresses using tor.

[1546] Mills, A., (2014), 'Rethinking Jurisdiction in International Law, British Yearbook of International Law, Vol 84, Issue 1, pp 187-239.

[1547] The easiest way to identify a defendant is to find out the details of the computer that was used to publish the statement or publish. The IP address will provide the required details.

[1548] In print media defamation, the editor can also be sued: If publishers in conventional libel, who perhaps were not involved at the manuscript stage of defamatory publications, are not excused.

bearing in mind the uniqueness of the internet (see-2.5.1.2). Section 8[1549] modified this longstanding traditional rule. Claimants can no longer sue in respect of statements first published long ago that remain accessible in online archives, even where new facts have since emerged that change the complexion of the statement (see-2.11.3). However, Section 8 allows the court to revert to the traditional-multiple rule, which can produce further inconsistency (see-7.13). This is one of the points where this thesis finds that traditional rules should be altered because the multiple-publication rule would amount to unending litigation on the same substance.

In social media, a mere click of a button can make a person a defendant for republication (see-4.1). Therefore, there is a need to add the 'actual malice phenomenon just like for public figures' to the subsequent publications (see-7.20). A modification in the law will protect both the victims and the innocent defendants. The single publication rule unnecessarily diminishes the opportunity for libel victims to be compensated, if their reputation can be harmed in future. There is a need to modify the standards for finding initial publication (single publication rule) and republication on social media (multiple publication rule) to maintain a balance between protecting libel victims and not hindering online publication or freedom of expression. This theme recommends that it would be better to introduce 'malice' for future subsequent publications. If the claimant can establish malice on the part of the defendant then the single publication rule can be ignored and re-publication can be dealt with as a publication of the defamatory content.

7.8.3: Is a change needed for social media?

This theme demonstrates that the application of traditional laws to cyberspace requires modification concerning social media. For instance, the concept of 'site of publication[1550]' is maintained as a base for jurisdiction. However, with the statutory clarification, the place of upload or place of download can be established as the place of publication and relieve the test of jurisdiction. Similarly, for social media the concept of

[1549] The single publication rule established that aggrieved persons would have only a year from the time when an offending statement first became publicly accessible to bring a claim.
[1550] *Harrods v Dow Jones* (2003) EWHC 1162; the court followed Gutnick, principle to conclude that online article was deemed to be published where Internet users downloaded, read and comprehended the article.

'download' needs clarification because downloading levels are not defined in terms of a sufficient level for appropriate assertion of jurisdiction.

Concerning connecting factor's inconsistency, the significance of nationality for social media libel is considerably low. With the increasing population mobility, 'nationality' as a connecting factor is weaker than before (see-4.6.1). It is reasonable to use a territorial connecting factor because of its certainty and uniqueness in physical space. As suggested, the place of publication should be used for jurisdiction. In the longer term, the courts must warn the technology giants (Google, Yahoo, Facebook and Twitter) to make changes to 'control' downloading of material (if the content providers demand immunity, they should provide more control to the actual publishers).

The publisher (potential defendant) should be given the right to target which country's user can download. As a quick fix, extra privacy settings can be installed just like Snapchat, where the sender should be able to limit who can view the information they share. That alteration would offer the potential libel defendants a little more control over who has access to their content. Nevertheless, so long as cyberspace is ubiquitous, it will create uncertainty in jurisdiction that is geographically bound.

7.9.: Are courts deviating from traditional defamation rules?

The central theme of this thesis relates to the feasibility of applying private international law rules to cyberspace torts. Considering the mutual dependence between traditional rules and the territorial world, there is a risk that this symbiotic relationship may be weakened by the growing importance of a border-disregarding internet[1551]. The situation is further complicated by the incidence of ubiquitous infringement, made possible by the pervasiveness of social media[1552]. The application of the 2013 Act to cases involving social media is complicated by the fact that social media differs markedly from traditional forms of media. However, English judges have been applying these rules to online libel claims.

[1551] The use of social media platforms increase, the lawsuits alleging defamation via social media platforms will continue to increase (see 9.1).

[1552] Shaw, S.R., (2017), 'There is no silver bullet: solutions to Internet jurisdiction', International Journal of Law and Information Technology, Vol 12, Issue 8, pp 685-695.

7.9.1.: Has the value of PIL diminished in cyberspace?

Claims of the tort of defamation have been the subject of litigation for years (see-5.2). Before the internet, defamation claims involved 'old-media' (books, newspapers, magazines, radio and television). With the advent of digital communication, defamation claims involve 'new-media' (social networking sites, web portals, search engines, online publications, and blogs). Social media communication has become the preferred method for youth[1553]. It is burdensome to navigate the application of long-standing libel principles[1554] because courts do not give due regard to the concepts of 'intention and mistake' in online libel (see-7.20):

1. Social media libel is a 'strict liability tort'; therefore, someone negligently posting defamatory material to a third person becomes liable for defamation (see-7.15). It was established in the *Laurentian*[1555] case, that a defendant would be liable, regardless of their intention.

2. Most users, who publish online in the heat of emotion or for the sake of argument, wrongly believe that they will remain anonymous[1556] (see-7.5.2). In the *Olsen* [2016][1557] case, the court noted that online anonymity could not be used to avoid liability for defamatory comments and ordered Facebook to disclose the defendant's information

3. Digital communication forges a false sense of intimacy because users believe they are communicating with a well-known group of individuals[1558]. The *Pritchard* [2016][1559] case established Facebook postings as a form of 'venting' because the defendant[1560] can be held liable for his defamatory statement, for

[1553] Twitter, Facebook, Instagram, and other forms of social media are becoming the dominant communication tools in today's political and social discourse, often entirely supplanting traditional media's role in public commentary.
[1554] Research conducted in 2016 showed that 46% of 18- to 24-year-olds were unaware they could be sued for tweeting an unsubstantiated rumour about another person.
[1555] *Dinyer-Fraser v Laurentian Bank* [2005] BCSC 255.
[1556] Social media users must be aware that their posts will not be held behind a cloak of anonymity should the posts contain defamatory content.
[1557] *Olsen v Facebook Inc* [2016] NSSC 155.
[1558] Any social media post given the Internet's huge worldwide audience, the effects of a statement made on social media could reach millions, if not billions, of people instantly.
[1559] *Pritchard v Van Nes* [2016] BCSC 686.
[1560] The defendant's defamatory statements becomes an implied authorisation for republication was inherent in the nature and probable result of his statements on Facebook.

the repetitions and republications, and for the comments to the defendant's Facebook page by other users

4. A published statement on the internet can cause damage all around the world, which cannot be reprieved because courts have localised the place of damage[1561]. Even before the 2013 Act, the English courts[1562] were hesitant to issue injunctions against online publications of defamatory content where their jurisdiction was based on only a part of the overall publication having been accessed in England.

7.9.2: How Jurisdictions approach social media libel:

Approach to jurisdiction and choice of law and the resulting multiplication of fora and applicable laws are often justified by the idea that someone who distributes content via the internet or offers a service online does so to reach a worldwide audience[1563]. This would mean, they have no reason to complain about being subject to the jurisdiction of courts and the application of substantive laws from all around the globe[1564]. Firstly, there is an unprecedented range of entities who use the internet to provide services, goods or information to users and many of them are not professionals[1565]. Secondly, the mere fact that someone uses the internet is not evidence of an intention to target a worldwide audience[1566]. Of course, in some cases, it is possible to restrict publications and other online services to particular jurisdictions[1567]. This is particularly true of services that are based on paid subscription or registration (see-2.6.1). However, it is seen differently in different countries. Contrasting approaches to defamation claims by various jurisdictions reflect not only different cultural values concerning freedom of speech, but fundamentally, highlights their historical relationship to fixed geographical territories:

[1561] *King v Lewis* [2005] ILPr 16, at [2].
[1562] *Jameel (Yousef) v Dow Jones* [2005] EWCA Civ 75.
[1563] *King v Lewis* (n 43) [2005] [33]–[34].
[1564] Svantesson, D., (2015), 'The Holy Trinity of Legal Fictions Undermining the Application of Law to the Global Internet' International Journal of Law & InfoTech, Vol 8, pp 219, 220.
[1565] Reymond, M., (2013), 'Jurisdiction in Case of Personality Torts Committed over the Internet', British Year Book of Private International Law, Vol 14, pp 205, 210–11.
[1566] *Peter Pammer v Reederei Karl GmbH KG* (C-585/08); *Hotel Alpenhof v Oliver Heller* (C-144/09); in its Judgment of the Court, Grand Chamber decided in 2010 that a websites global accessibility does not makes its users a subject to global jurisdiction.
[1567] Bigos, O., (2005), 'Jurisdiction over Cross-Border Wrongs on the Internet', ICLQ, Vol 54, pp 585-602.

1. ***Godfrey***[1568] [England]

This was the first English case involving online defamation. Justice Morland held that Demon Internet was not the publisher; however, under the 2013 Act, they would be classed as a publisher because the claimant notified Demon-Internet that defamatory post has been published.

2. ***Gutnick***[1569] [Australia]

This case is considered of utmost importance because it applied traditional rules and exercised jurisdiction to determine alleged defamation on the internet[1570]. It was the first judgment of final appellate court on the jurisdiction issue in an international online defamation case. It is a landmark ruling situated at the intersection between private international law and internet torts[1571]. It does establish an important rule for the localisation of online defamation, with implications for both jurisdiction and choice of law. To this day, it is the highest ruling anywhere in the world to consider the issue of jurisdiction for publication of defamatory material on the internet.

3. ***LICRA***[1572] [France]

The LICRA filed suit in France asserted that Yahoo's auction website, located in California, displayed Nazi memorabilia in violation of the law of (France). It was another ground-breaking case with regards to private international law involving jurisdiction and applicable law. It remains a leading authority; however, in France, most jurisdiction cases are dealt with under EU Regulations.

[1568] *Godfrey v Demon Internet* [1999] 4 All ER 342; Eady J exercised case management powers and refused to allow the defendant to rely on any posting made before a certain date. In *Burstein v Times Newspapers Ltd* [2001] WLR 579 at para [27] May LJ described the decision as being 'based on causative provocation in exceptional circumstances'.
[1569] *Dow Jones v Gutnick* [2002] HCA 56.
[1570] Collins, M., (2003), 'Defamation on the Internet After Dow Jones & Company Inc v Gutnick', Media & Arts Law Review, Vol 8, Issue 3, pp 181.
[1571] Collins, M., (2001), 'The law of defamation and the Internet', (Oxford University, OUP), pp 21.
[1572] *League against Racism and Antisemitism v Yahoo* [2001] 145 F. Supp. 2d 1168, Case No. C-00-21275JF; the French court order YAHOO to 'take all necessary measures' to dissuade access to the 'objectionable Nazi objects'.

4. ***Zippo's Test*** [The US]

The court adapted the minimum contacts test for specific personal jurisdiction in internet cases. A 'sliding scale' test was developed for determining whether a defendant's conduct over the internet allows a state to exercise personal jurisdiction over him. It still applies in the US regarding internet jurisdiction.

5. ***eDate Advertising and Oliver Martinez*** [The EU]

CJ decision remains a valid authority involving foreign law. Court considered whether Oliver could take a claim under French law against a UK-based newspaper. The contribution of CJ illustrates the 'partially unsettled' condition of the law in this complex area but provides a useful indication of the allocation of online jurisdiction.

6. ***Duffy v Google*** [New Zealand]

Court held that Google, concerning the auto-complete issue is a publisher, which is a big step forward for social media libel and privacy. Once again, jurisdiction was assumed using traditional methods.

The above-explained case laws can be seen as part of an ongoing process of adapting existing legal principles to a new environment, in both a national and international context, involving foreign-based defendants. It is interesting to note that the reputation of ordinary claimants is local, not global, so in most defamation cases, there will be a strong correlation between place of publication, local audience and domestic jurisdiction. Under the 2013 Act only local damages can be covered. Hence judgment would only be of value if it could be enforced where the defendant held assets. Barendt[1573] noted that obtaining a judgment is valueless unless it is enforceable. This theme recommends that the judges should decline jurisdiction if there is another appropriate forum, which will also help minimise 'forum-shopping' and the issues of 'enforcement'.

[1573] Barendt, E., (2013), 'Freedom of Speech and Internet: The Problem of Global Communication', Chatham House International Law Discussion; the courts must analyse that what international aspect that decision would make for the public in another country.

7.10.: Is there a need to modify jurisdictional rules for social media?

By declaring cyberspace a single jurisdiction[1574], or treating it as an international space[1575], the issues of jurisdiction and choice of law can be eradicated[1576]. This may still involve changing the existing rules of private international law. It was debated at the Hague Conference[1577] that the jurisdictional rules should be changed to combat cyberspace cross-border issues. Lawrence Lessig[1578] raised the point that individual regulations may be a threat to liberty of cyberspace and proposed the idea of a 'uniform code' to resolve online disputes. Johnson and Post[1579] also reinforced this idea by claiming that geographic boundaries are inappropriate and archaic. Kohl[1580] argued that traditional jurisdictional rules do not provide consistent outcomes and require legislative reforms.

7.10.1.: Existing jurisdictional rules are convenient for social media

The internet is continually evolving and requires specific rules to cater for new forms of communication but not based on jurisdiction[1581]. Any complications arising from the application of national regulations to increasingly mobile wrongdoers are not new[1582] because they existed before the internet context. Gray[1583] wrote that traditional notions of jurisdiction had made a relatively smooth transition into cyberspace; therefore, no new rules are necessary. Although the internet is a new forum, litigants, as always, exist

[1574] Edeshaw, A., (2003), 'Web services and the law: A sketch of the potential issues', International Journal of Law & Information Technology, Vol 11, pp 251- 272.
[1575] Casey, E., (2010), 'The Fate of Place: A Philosophical History', (Berkeley: University of California Press, US), pp ix.
[1576] Longworth, E., (2000), 'The possibilities for a legal framework for cyberspace including a New Zealand perspective' in T Fuentes-Camacho (eds.), 'The International Dimensions of Cyberspace Law' (Ashgate Hampshire and UNESCO, Paris), pp 38.
[1577] Haines, AD., (2002), 'The impact of the internet on the Judgments Project: Thoughts for the future', (Hague Conference on Private International Law, Preliminary Document No 17.
[1578] Lessig, L., (1999), 'The law of the horse: What cyber law might teach', Harvard L Rev, Vol 117, pp 501; Johnson, David R. & Post, David G., (1996), 'Law and Borders - The Rise of Law in Cyberspace', Stanford Law Review, Vol. 48, pp 1367.
[1579] Johnson, DR., & Post, DG., (1997), 'The Rise of Law on the Global Network' in B Kahin and C Nesson (eds), Borders in Cyberspace: Information Policy and the Global Information Infrastructure (3rd Ed, MIT Press, Cambridge MA), pp 6-12.
[1580] Kohl, U., (2002), 'Eggs, jurisdiction and the internet', ICLQ, Vol 51, pp 557.
[1581] Location of wrongs committed on international flights or sea-voyages was an issue of discussion for centuries, McNair, L., (1964), 'The Law of the Air', (3rd Ed, Stevens & Sons, London), pp 260-281.
[1582] Duckworth, L., (1930), 'The Principles of Marine Law', (4th Ed, Pitman & Sons, London), pp 30.
[1583] Gray, T., (2005), 'Minimum Contacts in Cyberspace: The Classic Jurisdiction Analysis in a New Setting', Journal of High Technology Law , Vol 1, pp 85-86; Surprisingly, our conventional notions of jurisdiction have adapted well to this new cyber-environment.

in physical space. Sadaat[1584] also mentioned that the judgments in leading cases strengthen the idea of applying traditional law to cyberspace.

Despite predictions of the demise of cyberspace[1585] after the Gutnick case, nothing has yet happened, and even more media and entertainment bodies are placing content online. The CA[1586] also established that the relatively new technology of the internet is manageable by the application of traditional wrongs. Chris Reed[1587] stated that the intentional flexibility of cyberspace allows all resources to be available anywhere and everywhere, so domesticating internet conduct becomes a meaningless concept in this context. Goldsmith[1588] stated that cyberspace transactions are no different from 'real-space' transnational transactions. Cyberspace involves people in real space in one jurisdiction communicating with people in real space in other jurisdictions. He stated that this communication often does well, but sometimes causes harm. The case of *Pritchard*[1589] made it clear that courts are becoming more comfortable in adopting new realities of social media and defamation. Stein[1590] mentioned that digital communication is available on a large scale but the internet is still no different from other mediums. Halsbury Laws[1591] of England noted that concerning the law of defamation, the internet raises no novel issues of principle. Cyberspace is merely a natural extension of existing forms of communication technology, rather than a novel way requiring sui generis laws[1592]. So, even though the internet provides a myriad of new platforms, if someone is defamed, traditional principles of personal jurisdiction can be applied[1593]. Therefore, reformulation of jurisdictional rules to deal with cyberspace libel is not compulsory.

[1584] Saadat, M., (2005), 'Jurisdiction and the Internet after Gutnick and Yahoo!', Journal of Information Law & Technology, Vol 1, pp 32.
[1585] Waldmeir, P., (2002), 'Borders Return to the Internet', The Financial Times [Assessed 13th April 2018].
[1586] *Pro-C Ltd v Computer City* [2001] 205 DLR 574 (Ont CA).
[1587] Reed, C., (2000), 'Internet Law: Text and Materials', (Butterworths Publication, London), pp 7-11.
[1588] Goldsmith, J., (1998), 'Against Cyber Anarchy', Chicago Law Review, Vol 65, pp 1239.
[1589] *Pritchard v Van Nes* [2016] BCSC 686.
[1590] Stein, A.R., (1998), 'The unexceptional problem of jurisdiction in cyberspace', Intl Lawyer, Vol 32, pp 1167.
[1591] Halsbury's Laws, (2018), 'Infromation Technology Law of England', (Vol 57, Lexisnexis), Civil and Criminal Wrongs in an Online Context, Defamation, pp 725.
[1592] Reed, A., (2000), 'Jurisdiction and choice of law in a borderless electronic environment', in Y Akdeniz, C Walker, and D Wall (eds) The Internet, Law and Society, (1st Ed, Pearson, Essex), pp 79.
[1593] *Burdick Superior Court of Orange City* [2015] Case No. G049107; it confirms that social media has not stripped us of the due process rights and provides a helpful roadmap to navigate the issue of personal jurisdiction in online defamation cases by applying traditional rules.

This theme agrees with Goldsmith[1594] that 'threat of multiple regulatory exposures exists' but rejects the arguments that the use of traditional laws is affecting the development of the internet[1595]. Since the advent of cyberspace, England has used common law rules for assuming jurisdiction, which has not prevented the enormous growth of e-commerce in the 21st century. Similarly, America still uses the 'sliding scale test' and 'minimum contacts[1596]', which offer even less clarity in the assertion of jurisdiction compared to traditional English rules. Hence, the traditional rules of jurisdiction are appropriate to apply to social media libel claims.

7.11.: Cause of action versus S8:

Common law has always held that the cause of action crystallises on publication[1597]. The tort of defamation does not require 'proof of special damage' to be actionable[1598]; however, the element of harm suffered is compulsory to establish the cause of action. It[1599] arises at the time of publication (see-5.5) so, English courts can have jurisdiction to hear the claim against an English-domiciled defendant because defamatory content is published at the place where it is read, heard or seen (see-7.13.1), and not where the material was first placed on the internet[1600]. In the Bata[1601] case, it was established that English courts have traditionally taken the approach that defamation takes place where the material is received and read (for online libel, where it is downloaded).

[1594] Goldsmith, J., (2000), 'Unilateral Regulation of the Internet: A Modest Defence', EJIL, Vol 11, pp 147
[1595] The Internet World Stats; http://www.internetworldstats.com/stats.htm [Assessed 14th January 2017].
[1596] American Bar Association supports the minimum contacts standard for determining jurisdiction on the Internet - the minimum contacts standard, with its sliding scale approach, does indeed result in less aggressive assertions of jurisdiction than in countries, where minimum contacts does not exist.
[1597] Kumar, S., (2003), 'Website Libel and the Single Publication Rule', The University of Chicago Law Review, Vol 70, Issue 2, pp 639-662; Braun, O., (2002), 'Internet Publications and Defamation: Why the Single Publication Rule Should Not Apply', Golden Gate UL Rev, Vol 32, pp 325.
[1598] Post, R. C., (1986), 'The social foundations of defamation law: Reputation and the Constitution', Cal. L. Rev., Vol 74, pp 691.
[1599] Cause of action is not relevant to the 'serious harm' threshold because it may be patently a barrier to bring an action upon publication.
[1600] Hartley, T., (2010), 'Libel Tourism and Conflict of Laws', ICLQ, Vol 59, pp 25.
[1601] *Bata v Bata* [1948] 92 SJ 574.

7.11.1.: Cause of action after the 2013 Act:

There has been no modification for cause of action under the 2013 Act. In the *Cooke* [2014][1602] case, the court reaffirmed that the cause of action arose at the point of publication. Parkes QC[1603] maintained that the cause of action arose at the time of the act, when the defendant created a fake and defamatory Facebook profile. The judge found that anyone searching for the claimant would find the defamatory material without difficulty. However, the 'seriousness threshold under Section 1' may prove a confusing dilemma because if the cause of action arises at publication, then there is no need to prove 'seriousness of harm' at the preliminary stage because cause of action must be crystallised at the point where harm is (or more likely) suffered. Section 1 may raise the issue of 'certainty' as to when cause of action arises (see Table-12)

Table-12: Uncertainty of Cause of Action

Cause of action	**Traditional approach**	**Modern approach**
When crystallised	At publication	At uploading
Action	Where it is read	Where it is downloaded
Legal requirement	Jameel abuse	Section 1
Harm requirement	Harm is presumed	Serious harm
Suitable for social media	Yes	Un-certain

Besides, at what point does Section 1 criteria have to be met to determine whether serious harm to reputation would be suffered or was likely to be suffered.

7.11.2.: Modern or traditional approach:

Interestingly, Section 1 does not overrule the traditional concept of 'publication' because if Parliament intended to abolish this, it could have expressly done this[1604]. However, in social media a statement can be shared, retweeted and more serious harm

[1602] *Cooke & Anor v MGN Ltd & Anor* [2014] EWHC 2831 (QB).
[1603] *Applause Stores Productions Ltd v Raphael* [2008] EWHC 1781 (QB).
[1604] Explanatory Notes (2013), http://www.legislation.gov.uk/ukpga/2013/26/notes [Assessed 4th April 2018].

can be suffered at later stages but the limitation rule may cause the claimant to bring an action after 1-year (see-2.11.6). In the *Starr* [2015][1605] case, it was established that the defamation remains time-barred by the limitation period, whereas, defamatory material can re-emerge via social media at any point. Lord Hailsham[1606] held that if defamatory matter 'emerges from its lurking-place at some future date, the claimant deserves extra damages, which are sufficient to convince a bystander of the baselessness of the charge (see-7.8.3). It is more likely to be shared to a wider audience than the original recipients; the internet's vast memory capacity allows it to be re-discovered and re-posted[1607] and 'search functionality' of social sites encourages that kind of re-discovery (see-2.5.1.2).

Many search engines and social media sites have some form of search functionality built into them[1608]. Facebook is an important example; Facebook search is attempting to challenge Google by linking search to real people and their preferences[1609]. The prospect of discovery-by-search has already impacted an assessment of damages[1610]. It is arguable that the prospect of a massive damages award will have an unjustifiably subduing effect on freedom of expression on the internet[1611].

7.12.: Convenient forum:

Under Section 9, jurisdiction and forum have become important threshold questions for social media libel issues (see-6.5). The value of protecting reputation endorses a broad interpretation of jurisdiction and forum conveniens, which aims to achieve efficient and fair resolution of libel claims (see-6.5.2).

[1605] *Starr v Ward* [2015] EWHC 1987 (QB).
[1606] *Cassell v Broome* [1972] UKHL 3;Lord Reid stated that 'bad conduct of the claimant may also enter into the matter, where he has provoked the libel, or where he has libelled the defendant in reply.
[1607] Even if a post is taken down, it may have been cached. If the post was not cached, it may still have been copied or forwarded by an original recipient.
[1608] Karapapa, S., & Borghi, M., (2015), 'Search engine liability for autocomplete suggestions: Personality, privacy and the power of the algorithm', International Journal of Law and Information Technology, Vol 23, pp 261-289.
[1609] Erdos, D., (2014), 'Data protection and the right to reputation: Filling the 'gaps' after the Defamation Act 2013', Cambridge Law Journal, Vol 73, pp 536-569.
[1610] *Google v Trkulja* 2016; *Bleyer v Google* 2014; *Dow Jones v Gutnick* 2002 (these cases are detailed above).
[1611] Cheer, U., (2005), 'Myths and Realities About the Chilling Effect: The New Zealand Media's Experience of Defamation Law', Torts Law Journal, Vol 13, pp 259.

7.12.1: Traditional forum test:

Under traditional English law, a transnational defamation claim is heard within the territory or location of the defamation[1612], or where the claimant suffered damages to his reputation (the law of the place of the wrong)[1613]. Anyone who republishes a defamatory statement, or facilitates its republication via social media, may be liable for per se damages for injury to reputation[1614]. The principle of 'forum non-conveniens' allows a court to dismiss a libel claim[1615] where an appropriate and more convenient alternative forum exists (see-6.9.1.2).

7.12.2: Modern forum approach:

The 2013 Act did not abolish the traditional forum test. If jurisdiction is established under Section 9, the defendant can request the court to reconsider whether the claim is being brought to the appropriate forum[1616]. In the *Goldhar* [2018][1617] case, the court refused to assume jurisdiction in an internet libel claim on forum issue because the appellant and most witnesses were in Israel. In the *Garcia* [2017][1618] case, the court established that all factors and concerns must be weighed together, with the overall burden on the defendant, had to prove that there is another forum in a better position to efficiently decide this claim. In the *Araya* [2017][1619] case, the judge determined that the factors included access to a witness, documents, costs as well as the justice system of other forum. Similarly, it was decided in the *Vecto* [2017][1620] case that the factors relevant to convenience, expense, the relevant applicable law and where the parties have their places of business must be considered.

[1612] *Novus Aviation Ltd v Onur Air Tasimacilik* [2009] EWCA Civ 122.
[1613] Kohl, U., (2007), 'Jurisdiction and the Internet: Regulatory Competence over Online Activity', (Cambridge University Press), pp 112-113.
[1614] Brown, R., (2013), 'Brown on Defamation', (2nd Ed, Carswell, Canada), Ch. 1.
[1615] The potential chilling effect of 'libel tourism' on social media expressions may give adjudicators pause: if jurisdiction were presumed in Internet libel cases, the fact that Internet publications can occur anywhere increased the threat of suit in far-flung locations, which risked chilling free expression.
[1616] The doctrine of forum non conveniens permits a court to decline to exercise jurisdiction when the comparative convenience or expense to the parties and witnesses calls for the case to be adjudicated elsewhere.
[1617] *Haaretz.com v Mitchell Goldhar* [2018] SCC case no 37202.
[1618] *Garcia v Tahoe Resources* [2017] BCCA 39.
[1619] *Araya Wolde-Giorgis v Ken Fetter* [2017] No 15-15580 (9th Cir).
[1620] *Vetco Gray UK Ltd and Vetco Gray Inc v FMC Technologies Inc* [2007] EWHC 540 (Pat).

In the *Kennedy* [2017][1621] case, the court suspended the action in England because Scotland was the more appropriate forum. Sir David rejected the argument that the only jurisdictional competition was between the courts of Scotland and England (both are internal courts) because the material was republished outside of the UK, which constituted an 'international element' sufficient to take the case out of the 'purely domestic' category[1622]. It also rejected the element of the EU regulation by suggesting that EU laws would only apply if: (1) The defendant is resident in the EU and sued in England; or (2) The claimant had petitioned more than one defendant, based in different jurisdictions (see-6.7). The *Cook* [2015][1623] case ruled that the issue of convenient forum may not add any value in England if the applicable law is under EU Regulation[1624]. If the *Kennedy* case was trialled in England, the recovery of global damages (i.e. damages in respect of all harm across multiple jurisdictions) would be available[1625] (because the harm was suffered in the UK and EU[1626]).

7.12.3: Tradition forum versus S9 (3):

In contrast to Section 9 (3) – appropriate forum, the traditional concept of forum conveniens includes, the domicile of the litigants (see-6.9.1.1). This difference may prove very important on the way a claim is articulated. Under Section 9, the courts can only grant a remedy for the harm suffered in England only. If the harm is suffered at another jurisdiction, the courts have to refuse jurisdiction, unless the claimant changes the claim for the loss suffered in England only. Whereas, under traditional forum test, the continuation of the case in England will not strike-out of global damages and the claimant would not have to change the claim fundamentally[1627]. Forum non-conveniens

[1621] *Kennedy v National Trust for Scotland* [2017] EWHC 3368 (QB).
[1622] The Regulation was therefore not engaged, and the court instead referred to the Civil Jurisdiction and Judgments Act 1982.
[1623] *Cook v Virgin Media Ltd and McNeil v Tesco plc* [2015] EWCA Civ 1287; the question for the CA was whether the English court had the power in a purely domestic case to stay or strike out a claim on the ground that the natural and more appropriate forum is Scotland. The court decided that where there is no international element and the competing jurisdictions are England and Wales, Scotland, or Northern Ireland so the court has power to stay a claim on the ground of forum non conveniens.
[1624] Arzandeh, A., (2017), 'The origins of the Scottish forum non conveniens doctrine', Journal of Private International Law, Vol 13, Issue 1, pp 130-151.
[1625] This approach was adopted by the CJEU in *Shevill v Press Alliance* [1995] 2 AC 18 to the UK's internal jurisdictions.
[1626] All jurisdictional matters should be governed by the Brussels Recast Regulation 2012/2015 or under domestic provisions should be enforceable within the EU member states.
[1627] Hooper, D., (2016), 'How the court will interpret whether England is the most appropriate place to bring a libel action, Entertainment Law Review, Vol 27, Issue 3, pp 102.

remains, according to the English formulation, a powerful tool for parties seeking to resist jurisdiction (see-2.17.1). Claimants must, for example, produce cogent evidence that they will not be able to access a remedy in other territorial court to satisfy an English court that it should accept jurisdiction. Judges are always ready to accept that territorial 'rule of law' creates problems in cyberspace[1628] because it creates barriers to victims obtaining substantial justice. This theme finds that Section 9 and traditional forum conveniens rules can, in harmony, satisfactorily be applied to social media libel claims.

7.13.: Choice of law versus S9:

Social media communication raises the questions regarding the adjudication of a claim and the applicable substantive law (see-4.3.2.2). The issues of judicial competence are essential and have a significant impact on the resolution of applicable law but the choice of law raises distinct concerns for cross-border defamation[1629]. It presents some of the most difficult issues in applying private international law to social media communication because its classification may impact significantly on the balance of rights and protection (see-4.3.3). Even before the 2013 Act, choice of law in defamation has proved to be a particularly challenging subject, so it demands reforms[1630] for online libel.

Section 8 introduced a single publication rule, which abolished a precedent of 150 years (see-2.11.3). However, it provides an exception where English courts can revert to the traditional 'multiple rule', if the subsequent publication is 'materially different' from the manner of the first publication (see-2.11). Accordingly, merely viewing the potentially libellous content online would again be considered a publication in England and harm is presumed to have occurred (see-2.11). Therefore a libel claim could then be initiated in England. Interestingly, regardless of the defendant (EU or non-EU), the 'choice of law' rules in England are still regulated under EU Regulations (see-2.7).

[1628] *Okpabi v Royal Dutch Shell* [2017] EWHC 89 ; *Lungowe v Vedanta Resources Plc* [2016] EWHC 975; England will be a by default appropriate forum if there is a risk of injustice in other states.
[1629] Mills, A., (2015), 'The law applicable to cross-border defamation on social media: whose law governs free speech in 'Facebookistan'?', Journal of Media Law, Vol 7, Issue 1, pp 1-35.
[1630] At present it remains excluded from both UK and EU statutory rules concerning choice of law in tort. Even the Defamation Act 2013 neglected to reform this area of applicable law.

However, defamation is regulated by common law[1631], which has been excluded from reforms in the field of 'choice of law' in tort.

7.13.1.: Choice of law and law of the place of tort:

In applying law of the place of tort to communications which take place online, the courts have determined that where the material is published through the internet, the tort occurs where it is 'downloaded' (at the location of the reader or recipient) (see-4.3.3, 6.4.2). The case of *Chadha*[1632], involved US publishers, where very low distribution of their magazines in England constituted a distinct English publication, meaning that under English choice of law rules the only law applicable to a defamation claim arising from those English publications is English law[1633]. A single webpage may thus easily give rise to a hundred distinct torts. In the *Loutchansky*[1634] case, an English court held that articles read on a website constituted 'publication' of the material they contained, at the time and place of downloading. Similarly, Justice Eady[1635] ruled that the tort arose at the place of download. He decided that the alleged material was downloaded in England, which makes it natural forum because the claimant had a reputation to protect in England.

7.13.2.: Position after the 2013 Act

Since, 2013 Act, the claimant cannot rely on traditional presumption of damage, so evidence of harm is required. In the absence of evidence, the court will presume that foreign law is the same as English law.

The 2013 Act essentially established a two-stage test for determining the law applicable to a tort.

[1631] Which law will apply? - England and Wales; Online Url, https://e-justice.europa.eu/content_which_law_will_apply-340-ew-en.do?member=1 [Assessed 29th March 2018].
[1632] *Chadha v Dow Jones* [1999] ILPr 829.
[1633] *Berezovsky v Forbes* [2000] UKHL 25.
[1634] *Loutchansky v Times Newspapers Ltd* (No.2) [2001] EMLR 36.
[1635] *King v Lewis* [2004] EWCA Civ 1329; the allegedly defamatory nature of text uploaded to a website in the US state of California. It was subsequently downloaded in England.

1. Section 11[1636] set the general rule, 'the applicable law is the law of the country in which the events constituting the tort occur'. Essentially, the basic rule adopted here is the law of the place of the tort (see-6.4.2)

2. Section 12 provides for a flexible exception, under which a different law may be applied if this appears substantially more appropriate by comparing the connecting factors between the tort and different countries (see 4.3.3)

Stage 1 – Section 11

As a general rule[1637], through the application of the law of the place of tort, the flexible exception allows the court to determine that a dispute, or an issue in a dispute, is more appropriately regulated by a different law. This includes cases where the issue concerns questions of loss allocation between parties whose relationship is centred in a different legal system[1638]. However, that legal system must be the natural forum based on the harm suffered. In the *Jackson* [2015][1639] case, English court ruled that the harm was suffered entirely in the US, which became the appropriate forum. The judge held that English court also had jurisdiction over the defendant but refused to assume jurisdiction on the grounds of forum non conveniens (see-2.17.1).

Stage 2– Section 12

This test is more concerned about double-actionability which requires the claimant to prove that the libel is actionably under the law where the case is brought and the law where the action is committed (see-2.11). If the claimant had satisfied the 'double actionability' rule, the Jackson case could have been decided in England. The claimant needed to show that the words in question were actionable both in the UK and in the country where the tort occurred[1640].

[1636] Section 11(2) offers further guidance in how that law should be determined where "elements of those events occur in different countries".
[1637] *Church of Scientology of California v Commissioner of Metropolitan Police* [1976] 120 SJ 690.
[1638] Article 4 (1) specifies that a tort is generally governed by the law of the place of the tort, which is defined as the place in which direct damage is suffered.
[1639] *Owusu v Jackson* [2005] 1 QB 801, ECJ.
[1640] Tsang, K., (2017), 'Double actionability: An outdated rule in modern times', UMKC Law Review Vol 86, Issue 1, pp 73-110.

This is also in accordance with Section 13[1641] that the claimants must prove that the publication is actionable in the law of the country where the tort was committed as well as by English law. The *Godfrey*[1642] case was the first defamation action involving the internet to reach a judicial decision within this jurisdiction, where the material was published through 'Usenet'. The English court held that material originating from the US, but distributed online through an English news server, constituted a publication in England.

7.13.3.: The impact of the tests:

The above tests demonstrate that exclusively English law will only govern the tort if it occurs in England and the damages based on harm to an English reputation may be claimed under English law[1643]. A claimant may only be claiming in respect of English publications, but they will frequently ask the court for an order regarding future publication of the defamatory material[1644]. The claimant with a reputation in multiple locations could potentially bring proceedings in English courts for local damages. The harm based on foreign downloads, give the claimant an option to sue the defendant in a country with the laws most favourable to their claim. They can also bring multiple suits in different jurisdictions in respect of the damage suffered in each jurisdiction individually[1645].

This theme insists that where defamation proceedings are brought in England relating to foreign conduct, whichever legal system has the higher standard of freedom of speech is applicable[1646]. The above analysis establishes that with Section 9, the application of traditional English law may be problematic for social media claims, when only a small minority of the recipients of an online communication download it in England. Even if, the Section 9 criterion is satisfied, the small number of English publications should

[1641] Section 13 of the Private International Law (Miscellaneous Provisions) Act 1995.
[1642] *Godfrey v Demon Internet Ltd (Application to Strike Out)* [2001] QB 201.
[1643] Carter, P.B., (1996), 'The Private International Law (Miscellaneous Provisions) Act 1995' Quarterly Law Review, Vol 112, pp 194.
[1644] Svantesson, D., (2012), 'Time for the Law to Take Internet Geolocation Technologies Seriously', Journal of Private International Law, Vol 8, pp 473.
[1645] Hooper, D., (2016), 'How the court will interpret whether England is the most appropriate place to bring a libel action, Entertainment Law Review, Vol 27, Issue 3, pp 102.
[1646] Mills, A., (2009), 'The Confluence of Public & Private International Law', (Cambridge University Press), pp 5.

mean a relatively low damages award, based on the application of English law[1647]. Similarly, claims arising out of downloads in other jurisdictions may be tried in England if the 'most suitable' condition is satisfied. However, the applicable law will be based on foreign law, not the external projection of English standards. The case of *Lewis* [2018][1648] may be a ground-breaking decision, which will decide if Facebook is a publisher and its subscriber around the world can sue in England. While the hurdle for suing a non-EU defendant is high, Martin's strong connections with England will put him in a strong position in the event that Facebook seeks to argue that England is not the most appropriate jurisdiction. This judgment will also clarify the impact of Section 9 for non-EU claimant concerning online libel[1649].

7.14.: Meaning of 'defamatory content':

A statement is defamatory if the words, 'lower the claimant in the estimation of right-thinking members of society 'causing them to be shunned or avoided' (see-5.2). Justice Warby[1650] established that in the defamation law 'defamatory meaning' can be divided into two categories: 'natural and ordinary' and 'innuendo'. The innuendo will only convey something to a reader who knows some relevant facts, which are not matters of common knowledge (see-5.5.1.2). The natural and ordinary meaning is to be determined by assessing the entire publication, including headlines, pictures or highlighted quotes[1651]. It is important to note that for social media defamation cases 'meaning' is a question of fact not a question of law[1652]. Hence, if a statement does not bear a defamatory meaning according to the reasonable reader, the claim will be set aside[1653]. The court dismissed the claim in the *Bukovsky* [2018][1654] case because the words

[1647] *Shevill v Presse Alliance* [1995] ECR I 415.
[1648] *Martin Lewis v Facebook* [2018] HC.
[1649] Fantato, D., (2018), 'Martin Lewis to sue Facebook over adverts', The Financial Times Ltd, FTAdviser.Com; Mark Lewis the lawyer leading this case said that Facebook is not above the law – it cannot hide outside the UK and think that it is untouchable.
[1650] *Bukovsky v Crown Prosecution Service* [2018] EMLR 5 [12]-[15].
[1651] *Charleston v News Group Newspapers Limited* [1995] 2 AC 65; it is possible for a series of juxtapositions, prominent headlines or single inappropriate sentences to significantly elevate the meaning of an article beyond that which the publisher intended.
[1652] *Alsaifi v Amunwa* [2017] EWHC 1443 (QB) [39]-[40].
[1653] *Lord McAlpine of West Green v Sally Bercow* [2013] EWHC 1342; *Cassidy v Daily Mirror Newspapers* [1929] 2 KB 331.
[1654] *Bukovsky v Crown Prosecution Service* [2016] EWHC 1926 (QB).

complained of never conveyed defamatory meaning. In the *Sube* [2018][1655] case, the court refused the claim at the preliminary hearing on meaning because the articles did not bear a defamatory meaning.

7.14.1.: Common law position of meaning:

English libel law is not directly concerned whether the defendant's statement is false[1656]. It focuses on the publication of false allegation regarding the claimant (see-5.5.2). The analysis of 'meaning' becomes an essential starting point in libel claims. Common law applies a 'legal fiction' of 'reasonable man test' to identify 'natural and ordinary' meaning. For online libel it is called a 'reasonable reader[1657]' (see-2.17.3). Justice Mcdonald[1658] concluded that in determining the meaning arising from the internet, the question must be determined by reference to the understanding of an ordinary reasonable reader. Tugendhat J[1659] stated that the reader will not select the bad meaning, whereas Sharp LJ[1660] believed that the reader will not select the less derogatory meaning.

The general principles[1661] that apply to the determination of meaning are well summarised by Anthony Clarke[1662](see Appendix-V). These principles apply to both 'online and offline' publications in the same way. But for the online publication, the court will also take into account the 'matters of ordinary general knowledge' and 'the matters known to the reader'. The statements published via bulletins and discussion boards are considered slander and may be understood to be vulgar abuse or not

[1655] *Sube v News Group & Express Newspapers* [2018] |EWHC 1234; Warby J concluded that 'alleged articles' did not convey any defamatory factual imputations. They did contain derogatory comments or opinions which did not harm claimant's reputation.
[1656] The courts are not concerned with what the author or publisher intended, nor with what any actual reasonable reader may have understood.
[1657] Antoniou, A., & Akrivos, D., (2017), 'Indecent images and defamatory meaning in late modern societies: Taking ordinary, reasonable readers outside their ivory tower', JM Law, Vol 9, Issue 2, pp 155-172.
[1658] *Google Inc v Trkulja* [2016] VSCA 333.
[1659] *Lord MacAlpine v Bercow* [2013] EWHC 1342 (QB) [66].
[1660] *Elliott v Rufus* [2015] EWCA Civ 121 [11].
[1661] (1) The governing principle is reasonableness (2) The hypothetical reasonable reader is not naive (3) Over-elaborate analysis is best avoided (4) The intention of the publisher is irrelevant (5) The article must be read as a whole, etc.
[1662] *Jeynes v News Magazines Limited* [2008] EWCA Civ 130 at [14].

considered seriously[1663]. Just as the court decided in the *Acobus* [2017][1664] case that Mr. Trump's tweets were 'non-actionable opinions'.

7.14.2.: Position since the 2013 Act:

Traditional threshold of seriousness, required 'tendency' to affect adversely the attitudes of others towards the claimant, to a 'substantial' extent[1665]. Section 1 adds to this traditional test by introducing the requirement to show 'potential harm'. The matters which previously discussed in libel claims, at the stage of quantification of damages, are now considered at preliminary stage. It also gives extra benefits to the defendant because he does not have to respond unless the claimant can establish a serious harm[1666]. In the *Smith* [2015][1667] case, it was held that the statement of fact conveyed an opinion rather than a factual allegation. Now the claimant bears the burden to prove that the words are defamatory, which is an extra hurdle under Section 1. Bean J[1668] accepted that S1 raised the bar to its maximum heights because under traditional law the words could be presumed defamatory (see-7.19).

7.14.3.: Social media cases of defamatory meaning:

This section uses the following examples to elaborate above point:

1. In the *Jack* [2017][1669] case, the court considered defamatory meanings of Twitter statements. At the trial the court established that the answers to two questions were compulsory before the 'hearing trial'. Do the tweets bear a defamatory meaning at common law and did the tweets cause (or were they likely to cause) serious harm to the reputation of the claimant? The court found that the second tweet contained innuendo which was understood by those who also followed the first tweet.

[1663] *Smith v ADVFN plc* [2008] EWHC 1797 (QB) [13] to [17].
[1664] *Acobus v Trump* [2017] No 153252/16, WL 160316, at 2.
[1665] This case reaffirmed the Reynolds checklist established in (*Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 at 205) i.e. it is also applied to foreign defendants if the choice of law is proved to be England.
[1666] *Mohamed Ali Harrath v (1) Stand for Peace Ltd (2) Samuel Westrop Reference* [2016] EWHC 665; the similar does apply to internet, Facebook, twitter and other social media websites.
[1667] *Baglow v Smith* [2015] ONSC 1175.
[1668] *Cooke v MGN Ltd* [2014] EWHC 2831; S1 has set a very high hurdle for the claimant to clear before he will be deemed to have a cause of action. If this threshold cannot be met, it certainly seems sensible to establish this as early as possible.
[1669] *Jack Monroe v Katie Hopkins* [2017].

2. In the *Wilson* [2017][1670] case, a tweet about Ms. Wilson's classmate and its further publication in the media resulted in the biggest damage award in defamation history. 'Everything she said about her life is a lie… what a liar (sic) she has become", was considered defamatory. As she was a successful actress, it caused her to lose leading roles within the TV industry.

3. In the *Alsaifi* [2017][1671] case, Warby J found that the words complained of were "clearly capable of defaming Mr Alsaifi" and awarded substantial damages.

4. In the *Westrop* [2016][1672] case, the claimant who had an Islamic social website was sued for libel for the defamatory article written by another defendant. He was held liable for editing the words, which bore defamatory meaning.

5. In the *Hardie* [2016][1673] case, the statements "Hardie is a brothel Madam; she runs a brothel club" were held to be defamatory because an ordinary online user would understand that Ms. Hardie runs a brothel.

6. In the *Dods* [2016][1674] case, the court concluded that the statements 'Dods did not contribute to Cassidy's death; Dods was a dedicated police officer and had responded within the limitations of his training" were defamatory. The court concluded that considering the full context an ordinary user would feel that Dods killed Cassidy. However, if the defamatory meaning cannot be assumed with regards to the 'ordinary reader' the claim for damages may not succeed.

7. In the *Dank* [2016][1675] case, the football manager claimed defamation when he was accused of giving a dangerous substance to his players. The judged awarded zero damages because he concluded that the defamatory statement contained a universal truth. A substance not tested for therapeutic use by humans can be harmful and must not be given to footballers.

[1670] *Wilson v Bauer Media Pty Ltd & Anor* [2017] VSC 521.
[1671] *Alsaifi v Amunwa* [2017] EWHC 1443 (QB).
[1672] *Mohamed Ali Harrath v (1) Stand for Peace Ltd (2) Samuel Westrop* [2016] EWHC 665 (QBD).
[1673] *Hardie v Herald & Weekly Times* [2016] VSCA 103.
[1674] *Dods v McDonald* [2016] VSC 201.
[1675] *Dank v Nationwide News Pty Ltd* [2016] NSWSC 295.

8. In the *Cripps* [2015][1676] case, Mr. Cripps was critical of Israel and the defendant posted "Hitler's disciples: The new racism of the political left". The court found that criticising Israel does not make the claimant anti-**s**emite; however, portraying the claimant to be a racist like Hitler is defamatory.

9. In the *Hockey* [2015][1677] case, the court considered the actual tweet, along with the hyperlinks to the full articles and placards of public protest to conclude that it bore the defamatory meaning.

In all the above cases the 'defamatory meaning' was trialled at preliminary hearings. The increase in the use of social media networks means that the allegations will increase. Hence, it is a good method to understand the meaning as early as possible to reject the 'joke trials'. The courts' approach to analyse the meaning as a preliminary trial is considerably important to develop the libel law for online communication. This theme acknowledges that the assessment of 'meaning' at the preliminary trial is the appropriate method. This should be assessed in tandem with the serious harm threshold i.e. does the defamatory meaning damage the victim's reputation? The courts can reflect back on the initial assessment at the time awarding damages. This will allow the judge to decide whether the case is likely to succeed at the early stage. It may also save the cost of a full hearing and also save valuable court time.

7.15.: Intention to harm via social media:

Defamation is an unjustified attack on another's reputation but social media communication presents challenges in determining whether something is defamatory[1678]. It is also a challenge to distinguish between 'defamatory words' and 'mere opinion'[1679]. An opinion cannot be classed as harmful because, as in the Trump case, the judge ruled that there is no remedy for 'opinions' (see-5.5.1.1). Similarly, mere insults and mindless communication via social media cannot be regarded as defamatory[1680]; however, the injured person may have other options (harassment,

[1676] *Vakras v Cripps* [2015] VSCA 193.
[1677] *Hockey v Fairfax Media Publications Pty Limited* [2015] FCA 652.
[1678] Burkell, J., & Kerr, I., (2000), 'Electronic Miscommunication and the Defamatory Sense', Canadian Journal of Law and Society, Vol 15, Issue 1, pp 81.
[1679] Parkes, R., & Mullis, A., (2017), 'Libel and Slander', (12th Ed, Sweet & Maxwell, London), para 12.7.
[1680] *Gill v Anagnost, Crews and Grenier* [2017] US; in a libel action the New Hampshire state court concerning the posting of defamatory statements on a billboard by mortgage broker Gill.

trolling etc.). Liability in libel cases depends on the facts regarding 'defamatory material[1681]' because the intention of the defamer becomes irrelevant if harm is satisfied[1682].

7.15.1: The intention arguments:

The motive or intention of the publisher will not be considered in libel claims[1683]. In the *Aviva Insurance*[1684] case, the judge noted that 'the motive of the person publishing the libel' would have no bearing. Likewise, the argument 'the publisher did not intend it to have libellous meaning' was also rejected by Cave J[1685] because the intention of the publisher is irrelevant. In the *Axel* [2014][1686] case, the court found that the statements about the intentions of a third party are to be categorised as 'value-judgments' rather than factual assertions lending themselves to proof. In the *Wilson* [2017][1687] case, where articles mistakenly published stated that Wilson lied about life events; the court considered that the defamation is not concerned with an honest mistake if the meaning and harm theorem are satisfied. In the *Lachaux* [2017][1688] case, the defendant claimed that she was unaware of the defamatory conversation going 'viral'. The court rejected her argument that at the time of publication she had no intention to cause Facebook defamation. In the *Rolling Stone* [2017][1689] case, the court rejected the argument that magazine is run for university students and there was no intention to cause character harm. In the *Rayney* [2017][1690] case, the court rejected the 'publication by mistake' argument and in the *Jack* [2017][1691] case, the judge also refused the evidence that the defendant did not intend to create continual harm by the Tweets. The *Malina* [2017][1692]

[1681] *Newstead v London Express Newspaper Ltd* [1940] 1 KB 377; the defendant admitted publication but denied that they were intended to the claimant. The judge noted that it is established law that liability for libel does not depend on the intention of the defamer but on the fact of the defamation.
[1682] Smolla, A. R., (1983), 'Let the Author Beware: The Rejuvenation of the American Law of Libel', U. PA. L. REV., Vol 132, Issue 1, pp 18; defamation does not provide compensation for emotional disturbance, but rather remedies a wrongful disruption in the 'relational interest' that an individual has in maintaining personal esteem in the eyes of others.
[1683] *Yeo v Times Newspapers Ltd* [2015] 1 WLR 971 at [88] and [89].
[1684] *British Columbia Medical Association v Aviva Insurance Company of Canada* [2011] BCSC 1399.
[1685] *Mir Shakil-Ur-Rahman v ARY Network Limited & Fayaz Ghafoor* [2015] EWHC 2917; preliminary issues trial considered meaning of the words and whether they consisted of assertion of fact or the expression of opinion.
[1686] *Axel Springer AG v Germany* (No.2) (Application No.48311/10) [2014] ECHR 745 at [63].
[1687] *Wilson v Bauer Media Pty Ltd* [2017] VSC 521.
[1688] *Lachaux v Independent Print Ltd* [2017] EWCA Civ 1334.
[1689] *Elias, IV, Hadford and Folwer v Rolling Stone Case* [2017] CV 2465.
[1690] *Rayney v The State of Western Australia* [No9] [2017] WASC 367.
[1691] *Monroe v Hopkins* [2017] EWHC 433 (QB).
[1692] *Melania Trump v Daily Mail* [2017] SCNY, Commercial Division No. 650661.

case held that if the injury is caused, the apology cannot reverse the initial damage; however, the judge may consider it during the quantification of costs.

7.15.2: Intention versus harm:

The intention of the defendant to cause harm is irrelevant[1693]. Similarly, the courts will also reject a claim where coincidence causes defamation. Judge Gremillion[1694] rejected the argument that the defendant was unaware of the existence of the claimant as the words were understood as defamatory by the people who knew the claimant. The 'intention' must be distinguished with actual malice because in the case of public figures intention and actual malice are essential elements (see-7.20). *Chris Gayle*[1695] succeeded in his defamation claim against Fairfax Media. The judge rejected the defence because actual malice was found on the part of Fairfax.

This theme highlights that defamation is a tort of strict liability. In a social media libel claim the court will consider the tendency and consequences of the publication. The judge will disregard motive or intention of the defendant unless the claimant is a public figure. Social media users cannot use the defence that they shared the post by mistake, unaware of its defamatory nature.

7.16.: S1 'Seriousness threshold':

The explanation of Section 1 and its impact has already discussed (see-2.13.1.1). This theme will evaluate if S1 is inconsistent for social media libel.

7.16.1.: Traditional position:

Under common law, if a statement is defamatory and refers to a claimant it becomes actionable because harm to reputation is presumed under traditional law[1696]. The test related to meaning was objective and there was no requirement to produce evidence of

[1693] *Independent Newspapers v Ireland* [2015] ECHR 28199/15.
[1694] *Allen v Thomson Newspapers, Inc* [2005] No. 04-1344 CA; It is immaterial whether the defendant. intended the defamatory statement to apply to the claimant.
[1695] *Chris Gayle v Fairfax Media* [2017] NSW SC.
[1696] *Knupffer v London Express Newspaper Ltd* [1944] UKHL 1, [1944] AC 116 [120].

actual harm[1697]. This presumption could open a floodgate to claims against online publications. However, since the advent of online publications the courts balanced the presumption of harm and actual damage by developing the 'Thornton threshold[1698]'. Justice Tugendhat noted that this threshold will prove a connection between substantial harm and common law presumption of damages (see-2.13.1). This traditional threshold allowed courts to strike out frivolous claims because if there was very little at stake the judges could reject the claims[1699]. Even before that the courts used the term 'Jameel abuse' against trivial claims. In the *Jameel*[1700] case, the court established that there is a need for a 'real and substantial' tort within the forum for a defamation claim to be made. The rules in Thornton and Jameel represented two independent mechanisms but very useful to eliminate trivial claims[1701].

7.16.1.1: Modern position:

The traditional concept of harm was brought into doubt by the 2013 Act, which requires that the harm must be "serious" before it is actionable. It is arguable if the claimants will have to prove serious harm? However, the 'Jameel threshold' is most recently applied in the *Linford* [2015][1702] case. The defendant argued that the claimant had no significant reputation in the jurisdiction because the extent of publication was minimal. The court concluded that there is no substantial harm to reputation so this claim is an abuse of 'Jameel process'. Section 1 now requires proof of 'serious harm' but Warby J held that the 'Jameel principle' is still applicable because it was not abolished[1703]. The 2013 Act balances out and modernises English libel law by introducing a 'seriousness

[1697] *Gillick v BBC* [1996] EMLR 267; Neill LJ noted that a statement should be taken to be defamatory if it would tend to lower the claimant in the estimation of right-thinking members of society generally, or be likely to affect a person adversely in the estimation of reasonable people generally.
[1698] *Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414 (QB).
[1699] This requirement of the threshold was also confirmed by the Court of Appeal in *Cammish v Hughes* [2013] EMLR 13.
[1700] *Jameel (Yousef) v Dow Jones & Co Inc* [2005] EWCA Civ 75.
[1701] The distinction between the two principles lay in the objective or subjective nature of the assessment - Thornton was a purely objective standard whereas Jameel doctrine was based on the assessment of the negative impact on the claimant by the alleged statement.
[1702] *Craig Ames v Stephen Linford* [2015] EWHC 3408; this is the first case to consider the serious harm test alongside 'Jameel abuse'. Warby J established that where the serious harm test is satisfied, it will be unusual for that claim to fall foul of the principle in Jameel.
[1703] The requirement that serious harm had been, or was likely to be inflicted took precedence over the requirement that a 'substantial or serious tort' had occurred.

threshold[1704]'. The modern update introduced under S1 is likely to harm the reputation (see-2.14).

7.16.1.2.: S1 (1) – likely to harm:

The term "likely" covers situations where the harm has not yet occurred at the time the action for defamation commences. There is need for further clarification because at face value, the meaning of S1 (1) is unclear[1705]. This theme assumes that this term refers to the possibility of some future event occurring or to the nature of the statement being one that is likely to cause serious harm to the reputation of the claimant[1706]. There has also been inconsistency in the application of the 'seriousness threshold' since 2013 as is evident from the interpretation of S1[1707] in recent cases:

1. In 2014, Bean J[1708] gave the first decision on S1 by clarifying that 'serious' is an ordinary common word but evidence is required to satisfy the serious harm test[1709]. He concluded that S1 involves a higher threshold than substantial harm and Parliament intentionally removed traditional substantial tests to avoid 'uncertainty and litigation over what difference may exist between the two terms'. He also considered S1 (1) 'likelihood' and 'future harm':

    i. Backwards - from the date of publication to see if 'substantial harm' has already been caused
    ii. Forward - from the date of issue of proceedings to see if substantial harm is likely to be caused

[1704] Section 1: A statement must have caused or be likely to cause 'serious harm' to the claimant's reputation in order for it to be actionable in the courts.
[1705] Gould, K., (2017), 'Locating a "threshold of seriousness" in the Australian tests of defamation', Sydney Law Review, Vol 39, Issue 3, pp 333-363.
[1706] The rejection of the Thornton "tendency" test by the Parliament means that the latter interpretation seems unlikely.
[1707] Cooke 2014, Alvaro 2015, Theedom 2015, Ames 2015, Lachaux 2015, Lachaux 2017 (CA) Monoro 2017.
[1708] *Cooke v MGN* [2014] EWHC 2831 (QB); the Sunday Mirror article published that the housing association, had significantly benefited from the misery of occupants, most of whom were on benefits, living in properties said to be in a state of disrepair.
[1709] Some statements were so obviously likely to cause serious harm to a person's reputation that likelihood could be inferred.

He held that the 'harm test' is to be assessed at the issue of proceedings (as opposed to the point of publication).

2. In 2015, Warby J[1710] concluded that the intention of S1 (1) was to create a new and stiffer statutory test requiring consideration of actual harm. He was of the view that it displaced the common law presumption of damage, so the claimants have to show on the balance of probabilities that the words caused (or will cause) serious harm.

3. Warby J endorsed his judgment in the case of *Ames* [2015][1711]. He noted that 'the actual or likely harm' to reputation is too slight to justify a claim. It should preferably be tried as a preliminary issue rather than be the subject of a strikeout/default application. He noted that the 'issue of meaning' should be determined alongside the issue of serious harm because separating the two is "inherently undesirable" (see-7.14).

4. In 2015, Moloney QC[1712] gave a different interpretation of S1. He concluded that if a claimant can prove serious defamatory allegations and publication to a fairly substantial audience, harm can be inferred. The claimant has all the ingredients for an inferential (but rebuttable) case on serious harm.

5. In 2016, Dingemans J[1713] found that serious harm could not be inferred from the facts, albeit the allegations were just as grave and there was similar publication regarding numbers. The total readership in England was a mere 55; however, he noted that 'seriousness' is not a number game. If a publication is limited but causes serious harm, it is sufficient to meet the required threshold.

6. In 2017, LJ Davis[1714] overruled Warby J that 'harm test' is not a primary issue. The claimants do not need to prove at an early stage that they have suffered (or likely to suffer) harm. It also reaffirmed the position that even where defamatory

[1710] *Lachaux v Independent Print Limited & Ors* [2015] EWHC 2242 (QB).
[1711] *Ames v The Spamhaus Project Ltd* [2015] EWHC 127 (QB).
[1712] *Theedom v Nourish Training Ltd* [2015] EWHC 3769 (QB).
[1713] *Alvaro Sobrinho v Impresa Publishing SA* [2016] EWHC 66 (QB).
[1714] *Lachaux v Independent Print Ltd* [2017] EWCA Civ 1327.

statements are published in different publications, each libel becomes actionable if it causes distinct damage to reputation.

7. In 2018, the Supreme Court[1715] accepted the appeal to decide the serious harm threshold.

7.16.2.: Traditional concept versus S1:

Concerning freedom of social media communication - it is a question of fact to identify at what stage a claimant's reputation, in terms of what people think of him should trump or silence the freedom of others to be able to publish statements about him. Concerning freedom of expression, traditional English law allowed a claimant to sue a defendant who posted anything, which makes others think less of him, without having to show that what was said is untrue, that it caused them harm or that the publisher was unreasonable (see-2.14). Arguably, traditional law provided less protection to freedom of speech but the 2013 Act provides more protections to speech. S1 ensures that only the most egregious cases are brought by 'seriousness threshold'. Justice Jay[1716] held that the claimant having his name linked to forgery was a serious libel.

However, the central question remains that when to satisfy the S1 threshold:

1. At the time when the cause of action arises
2. At the time when the claimant seeks permission to serve outside the jurisdiction
3. At the time when the issue of meaning is determined
4. At the time when the damages are calculated

There is no such requirement under CPR because in traditional law 'the cause of action' for libel is actionable per se on publication (see-7.16). Since the 2013 Act, a cause of action may remain incomplete until serious harm is caused/probable. The case of *Cooke* [2014][1717] considered the 'seriousness test' alongside the Jameel abuse process and Warby J concluded that the issue of serious harm is better dealt with as a preliminary

[1715] *Lachaux v IPL* [2018] 2 WLR 387; Supreme Court has to decide if: Parliament had created a separate factual test, or simply raised the objective threshold in Thornton from 'substantial' to 'serious' harm.
[1716] *Umeyor v Nwakamma* (Rev 1) [2015] EWHC 2980 (QB).
[1717] *Cooke v MGN* [2014] EMLR 31.

issue. In the *Anor* [2016][1718] case, the court also maintained that 'harm' is a preliminary issue and useful if dealt with 'meaning'; however, in the *PJS* [2016][1719] case, the court dealt with S1 at the stage of damages. The *Lachaux* [2017][1720] case, held that S1 raised the threshold from substantiality to seriousness but did not require proof of actual damage to reputation. There is an appeal pending in the Supreme Court on this issue.

Accordingly, Davies LJ[1721] held that Section 1 only raises the threshold 'from one of substantiality to one of seriousness: 'No less, no more but equally no more, no less', the words 'likely to cause' denote a "tendency" to cause serious harm. Davies LJ rejected Warby J's conclusion that the traditional presumption of damage is abolished. He clarified that Parliament intended to raise the threshold of harm, which is nevertheless compatible with the presumption of damage, so harm still can be presumed.

7.16.2.1.: Is S1 appropriate for social media libel?

The decision in the *Ames* [2015][1722] case is significant as the second to give detailed consideration to S1 in social media context. With regards to damage to reputation via social media, it is not possible to demonstrate how much harm is caused. Therefore, it should be presumed that the victim can suffer an injury to the reputation which is not actual (there might be an application for an injunction rather than damages). Whereas, in the event of actual harm (a person was fired because of libel), the libel claim becomes a matter of damages. The courts have considered defamation on Twitter on a number of occasions[1723]. The case of *Jack* [2017][1724] is a Twitter libel trial, post-2013, where the court considered if tweets bear a defamatory meaning in common law and when they are likely to cause serious harm. Concerning social media, there are some special features of publication:

1. It can be limited or very large, compared to a traditional "mainstream media" case. The number of publishers may be difficult to ascertain. It was also

[1718] *Undre & Anor v The London Borough of Harrow* [2016] EWHC 931.
[1719] *PJS v News Group Newspapers Ltd* [2016] UKSC 26.
[1720] *Lachaux v Independent Print* [2017] EWCA Civ 1334.
[1721] *Lachaux v Independent Print* [2017] EWCA Civ 1334.
[1722] *Ames & Anor v The Spamhaus Project Ltd* [2015] EWHC 127.
[1723] In the case of *Cairns v Modi* [2012] EWHC 756 (QB), the claimant recovered £90,000 damages in respect of a defamatory tweet published to 65 immediate publishees.
[1724] *Jack Monroe v Katie Hopkins* [2017] EWHC 433 (QB).

concluded in the *Brisard* [2016][1725] case that the claimant cannot rely on any "presumption of publication"

2. The publisher may be familiar with the views of the claimant[1726] and may be sympathetic with their views, so it is unlikely that much "actual damage" to reputation may be caused

3. There is also the issue of the context; for instance, Twitter restricts a tweet to 140 characters and the users have to express their views in short sentences. It is arguable, if these short tweets should be considered as vulgar abuse[1727] rather than statements of fact. Harm may, therefore, be more difficult to establish in comparison to a "serious media publication". Justice Nicklin[1728] also noted that it was difficult to imagine "serious allegations" are enough to cause serious harm

Based on above analyses, this theme suggests that if the harm is not actual, the claim should be dealt under the 'Jameel threshold'. Otherwise, it would cause the claimants to incur substantial costs at an early stage of proceedings by obtaining and preparing essential evidence.

7.16.3.: Assessment of likely harm:

Concerning S1 (1), the courts are unable to clarify at what point the likelihood of future serious harm should be assessed. The assessment of 'likely harm' is a similar process to the question of S1 serious harm, which is only relevant if 'serious harm' is not caused at the date of the hearing. To explain S1 (1), Bean J preferred the date on which the proceedings are started, whilst Warby J favoured the date of the hearing relating to serious harm. This theme recommends that Warby J's approach is more logical because 'serious harm' should have been established prior to the hearing. It is more suitable for social media libel because at the start of proceedings the claimant might not have suffered any actual harm but with the further publication and re-sharing future harm

[1725] *Amoudi v Brisard* [2006] EWHC 1062.
[1726] If they follow them on social media: The claimant's followers are unlikely to pay attention to the defendant's views and the defendant's followers are unlikely to have a high opinion of the claimant.
[1727] *McGrath & Anor v Dawkins* [2012] EWHC B3 (QB) [52].
[1728] *Anbananden Sooben v Eshan Badal* [2017] EWHC 2638 (QB).

may occur. It is questionable to what extent the limitation period and 'single publication' can have an impact on 'likelihood' of harm.

7.16.4.: Should S1 test be modified:

The analysis of initial case law has started to delimit the serious harm test because the judges gave contradictory rulings in each case. The unpredictability of the harm test may cause a deterrent for potential victims trying to protect their reputation because of the uncertainty of a claim succeeding. The above analysis proves that if 'serious threshold' is dealt with as a preliminary issue, it will be unnecessary for the defendant to file a defence before it is decided i.e. if the threshold is not satisfied then the claim will fail before the hearing trial. This offers a potential saving in both time and costs. An argument can be made that the judges unjustifiably steered away from what Parliament intended when introducing the S1 threshold.

Where it stands: S1 can no longer be seen as marking a significant departure from the traditional position because courts establish that it is merely a modification of the common law 'Thornton test'. The final verdict is yet to come in the Supreme Court[1729], which will provide a binding ruling on this unpredictable issue. This thesis would recommend where it is appropriate to infer serious harm. It would be burdensome and expensive for the claimant to attend an interim hearing to provide further evidence to prove serious harm. This would go against the grain of one of the stated purposes behind the reforms to the law of defamation: to reduce, rather than increase, costs.

7.17.: Importance of 'context' in social media libel:

The determination of context[1730] becomes crucial[1731] in online libel because trial by jury is abolished and the 'meaning' is defined by a 'reasonable reader' (see-2.17.3). Besides, the change of communication medium changes the world around us, the

[1729] *Lachaux v IPL* [2018] 2 WLR 387; Supreme Court has to decide if Parliament had created a separate factual test, or simply raised the objective threshold in Thornton from 'substantial' to 'serious' harm.

[1730] The context in this section is considered concerning publication as a whole whereas the meaning of context may be different with regards to employment, free speech, fiduciary relation and domestic relations.

[1731] The Internet users are aware of obvious illegal activities: Piracy, hacking and child pornography. There is a remarkable lack of awareness when it comes to defamation, which could carry equally harsh penalties. The social media users do not analyses information before sharing and they might not have the editorial/legal expertise to understand the consequences of their comments.

content must be interpreted in regard to this changed world[1732]. In social communication, context includes material/emoji's/pictures/headlines/hyperlinks in the same 'publication'[1733]: Online users have been sued for emojis[1734] and hashtag[1735]. Google has been sued for the auto-complete option. A libel will be established if a published statement reasonably implies false and defamatory facts. A false report may not be actionable if the contextual factors demonstrate that true meanings, as understood by the reasonable reader, are something other than what the words alone may suggest[1736]. Hence, the statement that a claimant has to prove false to succeed in libel action is not the 'literal phrase' published: But the meanings a reasonable reader with prior knowledge draws. This test may be different from traditional publication. Warby J[1737] acknowledged that the mode of publication can affect the way in which the ordinary reader absorbs information, including the amount of time they devote to reading or viewing it.

7.17.1: Position since the 2013 Act:

The 2013 Act did not amend the well-established rules, which may be easy to apply to printed publications[1738]. However, for more dynamic and interactive social communication, the determination of 'context' becomes important. Court of Appeal[1739] noted that statements made on social media could not reasonably be interpreted as factual statements based on their distinctive 'content, tone, and context'. For instance, Twitter characters limit for one tweet is 140. It became a norm of pithily expressed information in short bursts. Hence, a single tweet rarely exists in isolation from others[1740]. A tweet that is said to be libellous may include an innuendo. It may have to be read as part of a series of tweets, which the 'ordinary reader' will have seen at the same time.

[1732] Mcluhan, M., (1964), 'Understanding Media' (NY, McGraw Hill), pp 9.
[1733] Jones, A., & Lidsky, L.B., (2016), 'Of Reasonable Readers and Unreasonable Speakers: Libel Law in a Networked World', Virginia Journal of Social Policy and the Law, Vol 16, Issue 2, pp 29.
[1734] *McAlpine v Bercow* [2013] EWHC 1342 (QB).
[1735] Ave Point v Power Tools [2013] 981 F. Supp. 2d 496 WD; the court analysed a series of hashtags to understand the alleged defamation that the plaintiff claimed were designed.
[1736] *Farah v Esquire Magazine* [2013] No. 1:11-cv-01179.
[1737] *Monroe v Hopkins* [2017] EWHC 433 (QB).
[1738] It includes books, newspapers, magazines, static online publications, blogs or information on websites.
[1739] *Giduck v Niblett* [2014] No. 13CA0775, WL 2986670.
[1740] Hansson, S., (2013), 'Defamation in 140 character or Fewer – The case of McAlpine v Bercow ', CTLR, Vol 19, Issue 6, pp 172.

The *Seldon*[1741] case proposed that a court has to analyse each separate publication to draw the defamatory meaning. Similarly, the courts might have to analyse the conversational dialogue to determine the extent of harm[1742]. It is arguable that the defendant may delete the first tweet before publishing the second tweet. However, Dingemans J[1743] established that this might only affect the calculation of damages rather than the meaning of 'defamation' (see-7.20). It is arguable that the conversation via social media is meant to be personal, but if it is conveyed to another reader, it will be considered 'published'[1744]. In the *Stocker* [2016][1745] case, the wife sent a libellous email to her husband. She also made comments on Facebook (she was unaware of her privacy settings) during a conversation with her new partner, which were also visible on her friend's Facebook. Arden LJ found her liable because the exchange of Facebook communication was visible to her friends. The court considered full context and other conversations to establish defamatory meanings. In the *Bussey* [2015][1746] case, Eady J awarded £10,000 to the claimant after considering the context because the comments were made via Google Maps and later published on a review website. Moloney J[1747] had to consider an online petition started at school and the subsequent conversation via social network to assume the defamatory sting of the alleged statement.

In short, for social media, the context includes[1748] (1) Matters of common knowledge and (2) Matters that were put before the users. This theme focuses on the legal repercussions of social statements: Which are often not understood by individuals. Social media users still think that online communication is like sending an SMS to others, rather than publishing something for the general public. The above discussion proves that the courts will analyse the full picture to understand if the shared words contain defamatory meanings.

[1741] *Seldon v Compass Rest* [2012] No. 03050/11, WL 5363518; the judge held that the ordinary reader would understand the defamatory meaning after reading the online and email article written by the defendant.

[1742] Yew, K., (2015), 'Reputation and Defamatory Meaning on the Internet-Communications, Contexts, and Communities', Singapore Academy Law Journal, Vol 27, Special Issue, pp 694.

[1743] *Sobrinho v Impresa Publishing SA* [2016] EMLR 12 at [46].

[1744] *Pullman v Hill* [1981] CA 1891; a claimant dropped a letter in an open card containing defamatory matter. It was held the card was likely to be read by somebody else and therefore he effectively published the information containing the defamatory statement.

[1745] *Stocker v Stocker* [2016] EWHC 474 (QB).

[1746] *Bussey v Jason Page* [2015] EWHC 563 (QB); reviews of businesses that appear on Google Maps can be posted on the site and are accessed through the search engine. Their reputations have been vindicated following the republication through the medium of an online review site.

[1747] *Tardios v Linton* [2015] EWHC 2552 (QB).

[1748] Yew, K., (2015), 'Reputation and Defamatory Meaning on the Internet-Communications, Contexts, and Communities', Singapore Academy Law Journal, Vol 27, Special Issue, pp 694.

7.18.: Identifying the defendant:

In social media libel the author, the editors or the legal entity may be responsible for the publication (see-5.9.1.1). The critical question arises, who should be sued, who is the defendant, who is the publisher because if the wrong defendant is sued, the case may be dismissed[1749]. The traditional English concept defines 'primary and secondary publisher'[1750]. It clarifies that a person who is responsible for the publication of defamatory material can be sued[1751]. The victim can sue more than one primary publisher to claim damages/costs[1752]. For instance, defamatory comments made during television-interviews allows the victim to sue all primary publishers; the interviewee (as author) and broadcaster (as commercial publishers). However, in social media publication, it is sometimes difficult to locate the defendant/publisher (see-7.6), because it may involve primary[1753] and secondary[1754] publishers.

7.18.1.: Primary or secondary publisher:

An individual who deliberately publishes the defamatory material will always be liable as a primary[1755] publisher (see-5.9.1.5). The 2013 Act defines that an individual, who is aware of libel publication only becomes accountable as a secondary publisher, if he chooses not to remove it[1756]. Interestingly, if a secondary publisher exerts some control over published content, he becomes a primary publisher[1757]. He can also be sued as a secondary publisher[1758] if he passively made the content available to others[1759]. In the *Fevaworks* [2013] [1760] case, the court established that the content providers can be

[1749] *Richardson v Facebook* [2015] EWHC 3154 (QB); Warby J rejected the appeal because Facebook was the wrong defendant.
[1750] This includes writer, producer, director, editor, interviewee, broadcaster, even, in the case of a book, the printers or the newsagents or booksellers.
[1751] *Byrne v Deane* [1937] 1 KB 818; it established this old English concept; where the Golf secretary and club owners both were held responsible for defamation for failure to remove defamatory article from their noticeboard.
[1752] *Monroe v Hopkins* [2017] EWHC 433 (QB).
[1753] The author, editor and commercial publisher of the defamatory publication.
[1754] ISPs, Printers, websites or book sellers, may only be sued if it is not "reasonably practicable" for the claimant to sue a primary publisher.
[1755] *Wilson v Bauer Media Pty Ltd* [2017] VSC 521.
[1756] *Lachaux v Independent Print Ltd* [2017] EWCA Civ 1334.
[1757] *Shakil-Ur-Rahman v ARY Network Limited* [2016] EWHC 3110 (QB).
[1758] *Dr Yeung, Sau Shing Albert v Google* [2014] HKCFI 1404.
[1759] *Duffy v Google Inc* [2015] SASC 170.
[1760] *Oriental Press Group v Fevaworks Solutions* [2013] HKCFA 47 [75].

secondary publishers if they could control content and could prevent that publication (see-5.6).

The courts have adopted few standards to identify primary publisher:

1. The knowledge criterion[1761]
2. The control criterion[1762]

7.18.2.: Position since the 2013 Act:

The 2013 Act has not modified the definition of publisher[1763] hence, based on the above criteria, any user/provider/website operator can become liable as a primary publisher (see-5.9.1.2). Common law cases[1764] suggest that judges are reluctant to hold the service providers to be primary publishers. Eady J[1765] decided that Google could not be deemed as a publisher of material on its blogger platform. Similarly, *Google-Australia*[1766], *Google-UK*[1767], *Google-NZ*[1768] and *Google-Spain*[1769] judgments also suggest that Google is not a publisher but a mere data collector because the operation and control of the Google search engine reside with Google-US. Therefore, being subscriber of Google Inc., they become the distributor rather than a publisher. For social media communication, there is a need to differentiate between distributor and publisher[1770] because different rules may apply to each[1771].

[1761] *Bunt v Tilley* [2006] EWHC 407 (QB) [21-22]; did the defendant foresee the gravity of harm.
[1762] *Oriental Press Group v Fevaworks Solutions* [2013] HKCFA 47 [76]; did the defendant had control.
[1763] It leaves unchanged the significant existing intermediary defences at section 1 of the Defamation Act 1996 and Regulations 17 to 19 of the Electronic Commerce (EC Directive) Regulations 2002 (the "Regulations").
[1764] *Bunt v Tilley* [2006] 3 All ER 336; *Godfrey v Demon Internet* [1999] 4 All ER 342; *Metropolitan International Schools (Train2Game) v Digital Trends* [2010] 3 All ER 548 considered; *Davison v Habeeb* [2011] All ER (D) 205.
[1765] *Tamiz v Google Inc* [2013] EWCA Civ 68.
[1766] *Rana v Google Australia Pty Ltd* [2013] FCA 60.
[1767] *Richardson v Facebook* [2015] EWHC 3154 (QB).
[1768] *A v Google New Zealand Ltd* [2012] NZHC 2352 at [44].
[1769] *Google Spain SL, Google Inc. v Agencia Espanola de Proteccion de Datos (AEPD) and Mario Costeja Gonzalez* (Case C-131/12).
[1770] Section 5, the Defamation Act 2013 immunes both content providers (Yahoo, Google, Facebook, Twitter) and service providers (ISPs); however, they may be liable in different circumstances.
[1771] Descheemaeker, E., (2015), 'A man must take care not to defame his neighbour: The origins and significance of the defence of responsible publication', University of Queensland Law Journal, Vol 34, Issue 2, pp 239-264.

A distinction between content providers and service providers is also needed to establish the primary publisher. In the *Defteros* [2017][1772] case, Google denied being a publisher of defamatory content by claiming that they do not exert any control over content.

7.18.3.: Traditional versus social media publisher:

Traditionally, if a reporter writes a defamatory article, the newspaper-publisher is sued because he has editorial control. Google argued that it is not a publisher but a content provider so should be immune from claims just like ISPs[1773]. However, they can also become primary publisher upon receiving a notice about the publication of alleged material (see-5.9.3). If they do not remove the material within a reasonable time, they could be sued as publisher of the content complained about[1774]. For instance, Twitter has empowered its users to express their views and shape events i.e. everyone is a potential publisher on social media. Influence has shifted beyond traditional media to a more democratised concept and where traditional media have shied away from naming an individual or company, for fear of legal reprisal, social media have stepped in to 'restore justice'[1775].

There is not enough case law to understand recent legal developments. The liability of providers becomes crucial because of the increase in subscriber-based networks, which use cyberspace as a vehicle of defamation. The law reached critical mass in the case of *McAlpine*[1776], where the defendant's defamatory tweet, was posted to the members of her network. The court found that the use of symbols (image or emoji) makes the user a social media publisher.

This theme argues that when a libellous remark is made by a contributor or interviewee in a program the channel/broadcaster are held responsible as commercial publishers of the libel. Similarly, social media sites offer design layouts to their users. It provides the required services to enable ads to be placed. It has the power and capability to remove

[1772] *Defteros v Google LLC & Google Australia Pty Ltd* [2017] VSC 158.
[1773] *Google Inc v Trkulja* [2016] VSCA 333.
[1774] *Google Inc v Trkulja* [2016] VSCA 333.
[1775] Pelletier, N., (2018), 'The Emoji that Cost $20,000: Triggering Liability for Defamation on Social Media', Wash. U. J. L. & Policy, Vol 52, pp 227.
[1776] *McAlpine v Bercow* [2013] EWHC 1342 (QB); 'innocent face' or emoticon can be understood by the reasonable reader to mean being insincere and ironical.

or block access to the material concerned. They make the users agree to their terms and conditions, which state that no defamatory/terror/anti-government content will be shared. Then they should remove it or be held liable for libel (see-7.8).

7.19.: Extent of publication:

The 'extent of publication' is another traditional concept applied by judges[1777] in traditional media defamation cases. However, previously it was applied while assessing damages, as Bean J[1778] stated 'the extent of publication' is a well-established phenomenon, which helps in the assessment of damages. It is also used to find the jurisdiction based on downloading as the Gutnick[1779] case held that the place of publication is the jurisdiction, where the material was published and received. In the Richardson[1780] case, the court stated that it was published at the point at which it was capable of being comprehended by a third party.

7.19.2: Extent of publication versus S9 (2):

Under Section 9 (2)[1781] 'the extent of publication' is considered at the beginning of proceedings when a claimant requests service out of jurisdiction. It has become a preliminary issue just like harm and forum conveniens. S9 (2) requires the courts to consider the extent of publication by making the claimant to bring before the court the fullest reasonably available evidence as to publication in all places where the words complained of have been published. S9 must, therefore, be read and given effect under Art 6 of the Human Rights Act 1998, which must be compatible with the claimant's right to access a court (see-7.6, 6.8). The only problem in online libel is the typically

[1777] *Ghannouchi v Al-Arabiya* [2007] EWHC 2855 (QB); *Veliu v Mazrekaj* [2007] 1WLR 495; *Campbell-James v Guardian Newspapers* [2005] EMLR 24; This test allows compensating the claimant for damage to his reputation, vindicate his good name and take account of the stress, hurt and humiliation which defamatory publications cause.

[1778] *Turner v MGN* [2005] EMLR 25.

[1779] *Dow Jones & Co Inc v Gutnick* [2002] HCA 56; defamatory statements are actionable in the jurisdiction of publication and damage to reputation.

[1780] *Richardson v Schwarzenegger* [2004] EWHC 2422 (QB), the English court reinforced Gutnick's findings that an internet publication takes place in any jurisdiction where the relevant words are downloaded.

[1781] Section 9(3): The claimant will need to adduce such statistics in relation to republications and any statement conveying the same, or substantially the same, imputation as the statement complained of.

limited extent of publication and the inherent evidential difficulties where no record of "hits" is available[1782].

The first case to consider S9 (2)[1783] was *Ahuja* [2015][1784], which established that the judges have to take into account such matters as the amount of damage to the claimant's reputation in England in comparison with other jurisdictions[1785]. Lorna Skinner[1786] established that the extent of publication is another preliminary step[1787] and puts an extra burden on claimants because courts are bound to consider the extent to which publication was targeted at a readership in England as compared to elsewhere. The claimants are forced to seek expert evidence by analysing Twitter/Facebook activity to provide the detailed information required by the court. In essence, online publications have to be examined from their geo-profiling (where a Twitter user had indicated their location) or for other indications of their geographical status. This evidence will show if the extent of the activity and the majority of people posting, commenting or re-tweeting are based in England or other jurisdictions. It is debatable what evidence the claimant has to bring to prove 'extent of publication'. Does he have to produce the stats of the users downloading the defamatory material; or the statements of witness that the claimant suffered harm will be sufficient to justify evidence. Previously, the context of publication could be proved using admissible evidence of real and actual numbers of readers of the offending content[1788].

The case of *Ames* [2015][1789] concluded that the claimant has the liberty to call witnesses to support his claim on serious harm, which can satisfy the extent of publication requirement. However, it may also go against his understandable desire not to spread the libellous content. The claimant has to take the risk of asking individuals if they have read 'the content' and what they think of him? What if the persons who think badly of

[1782] *Applause Stores Productions Ltd v Raphael* [2008] EWHC 1781 (QB).
[1783] Tugendhat J observed that the effects of Section 9 make the judges to consider all the jurisdictions where the defamatory statement has been published to determine whether England is clearly the most appropriate place (see-2.11.2).
[1784] *Ahuja v Politika Novine I Magazini D.O.O.* [2015] EWHC 3380 (QB).
[1785] *Simpson v MGN Limited* [2015] EWHC 77.
[1786] *HRH Prince Alwaleed Bin Talal Bin Abdulaziz A Saud v Forbes* [2014] EWHC 3823.
[1787] The Defamation Act 2013 abolished trial by jury. It gives judges greater scope to achieve early resolution. Previously some issues could not have been decided until it was known whether the trial would take place before a jury.
[1788] *Leech v Green & Gold Energy Pty Ltd and Anor* [2011] NSWSC 999.
[1789] *Ames v The Spam house Project* [2015] EWHC 127 (QB) at paragraph 55.

the claimant are not likely to co-operate in providing evidence. Dingemans J[1790] highlighted the fact that there might be difficulties in getting witnesses to say that they read the words and thought badly of the claimant. The extent of publication is here to prove it also causes damage. Hence, republication may be an interesting fact to examine with regards to Section 8 which limits the liability of the defendant in further publication. Bingham LJ[1791] stated that in online defamation, it is immaterial to conclude that the damage caused by the publication began and ended with publication by the original publisher. Similarly, in the *Hopkins* [2017][1792] case, 'the context of assessing how many times a tweet had been viewed', the judge noted that 'precision is, of course, impossible, but nor is it necessary'. It is enough to present a sound assessment of the overall scale of the publication. In the *Zahwai* [2017][1793] case, the court also considered if the words complained of were published and republished to a large number of readers in England. The court accepted the claimant's evidence: (1) the nature of the Press TV website; (2) the extent of website republications; (3) the extent of social media republications; (4) approaches made to the claimant following publication.

7.19.3: Extent of publication for service outside:

This theme is co-related to the theme with service of claim form (see-7.4, 7.5). It highlights that the victims who require permission for service out, are required to produce statistics on publication. These figures must be obtained regarding all forums with which the claimant has any connection. These statistics can also be submitted on the bases of the 'extent of publication', which may become the appropriate alternative means by which to bring the claim. However, this requirement of S9 (2) is time-consuming and may also increase the difficulty and cost to the victim because along with the 'published-figures', expert witnesses may also be required. In social media libel, it becomes complicated because it is not simply a closed coffee shop among friends, it publishes to thousands of other users[1794]. The *McAlpine* [2013][1795] case also highlighted this difficulty of gathering evidence. The claimant's lawyer presented the examples of a couple of 'high-profile Tweeters' - they have hundreds, or even thousands,

[1790] *Sobrinho v Impresa Publishing* [2016] EWHC 66 (QB) at [46]-[50].
[1791] *Slipper v BBC* [1991] QB 283 at 300.
[1792] *Monroe v Hopkins* [2017] EWHC 433 (QB) at [58].
[1793] *Nadim Zahwai v Press TV Ltd* [2017] EWHC 1010 (QB).
[1794] Halliday, J., (2013), 'Sally Bercow denies 'trivialising' public apology to Lord McAlpine', online Url www.theguardian.com [Assessed 2nd April 2018].
[1795] *McAlpine v Bercow* [2013] EWHC 1342 (QB).

of followers. For celebrities, it becomes even more difficult and proving actual malice is another hurdle (see-7.20); which was also highlighted in the *Page* [2015][1796] case. In the *Rai* [2015][1797] case, it was established that the internet had given publication new force, which creates the potential for libel to spread 'virally' when 'shared', 'reposted' or 'retweeted[1798].'

7.19.4.: Current position concerning Section 9 (2):

Given the strictures in *Ahuja*[1799] case, it is compulsory for the claimant to submit evidence of the extent of publication (see-7.1, 7.7). Such evidence must be provided to demonstrate that his reputation is substantially in England rather than abroad. If the claimant is unsuccessful in obtaining this evidence, the courts must consider whether the claimant would receive a fair trial abroad. In this scenario, courts need explicit proof that the defendant enjoys any special status. It was accepted in *Zahawi* case that the defendant in Iran was a state-affiliated media outlet and the court accepted that any case would be likely to suffer significant delays through administrative and judicial/political interference. There could be scenarios where the defendant has political affiliation and would not receive a fair and neutral hearing abroad[1800].

The claimant's burden can be satisfied by proving to the judge that there exists a risk that justice could not be obtained in an overseas court because of incompetency, corruption, political influence or independence[1801]. There is no rule that the English court cannot examine the question of[1802] whether the international court or the foreign court system is corrupt or lacking in independence[1803]. Lord Diplock[1804] stated that it is

[1796] *The Bussey Law Firm PC v Page* [2015] EWHC 563 (QB), at [14].
[1797] *Rai v Bholowasia* [2015] EWHC 382 (QB), at [173].
[1798] Perry, S. J., & Marcum, T. M., (2016), 'Unmasking the anonymous online speaker: Balancing free speech and defamation, Labour Law Journal, Vol 67, Issue 4, pp 529; Perry, R., & Zarsky, T. Z., (2014), 'Liability for online anonymous speech: Comparative and economic analyses', Journal of European Tort Law, Vol 5, Issue, 2, pp 205-256; Vamialis, A., (2013), 'Online defamation: Confronting anonymity', International Journal of Law and Information Technology, Vol 21, Issue 1, pp 31-65.
[1799] *Ahuja v Politika Novine I Magazini D.O.O.* [2015] EWHC 3380 (QB).
[1800] *AAA v Unilever Plc* [2017] EWHC 371 (QB).
[1801] Pertoldi, A., Neill, J., (2017), 'Cross-border Litigation Perspective', Herbert Smith Freehills, Issue 3, pp18-22; when deciding disputes over jurisdiction, courts are sometimes faced with arguments that justice could not be obtained in a particular foreign jurisdiction due to issues concerning politics, corruption or other obstacles to justice.
[1802] The rule is that considerations of international comity will militate against any such finding in the absence of cogent evidence.
[1803] *Berezovsky v Michaels* [2000] 1 WLR 1004 at 1032.

possible that in some countries, there is a risk that justice will not be obtained by a foreign litigant[1805]. There must be cogent evidence to prove this because the difference in foreign courts and English courts procedures and methods will not be accepted by the courts[1806]. However, expert evidence is often central[1807]. The courts required positive and cogent evidence as to the risk of injustice[1808] and find the location where the case may be tried suitably for the interest of all the parties and the ends of justice[1809]. Similarly, the judge must also consider such factors as the convenience of witnesses and the relative expense of suing in different jurisdictions[1810].

7.20.: Actual malice:

Actual malice is an American concept, which emerged in the case of *Sullivan*[1811] and defined a parameter of practical knowledge of recklessness in libel claims brought by public-figures[1812]. It is based on the actual and reckless thinking, which made the defendant publish the defamatory words[1813]. There is no requirement of 'actual knowledge' for the claim brought by ordinary persons, so public-figure defamation cases differ from private-figure defamation cases[1814]. Private claimants have to show that a reasonable person would have researched the statement before publishing it, whereas public-figures have to show that what the defendant did, a 'reasonable person' would not have done (see-2.16). Therefore, when famous people sue over lies, they

[1804] *Owners of the Las Mercedes v Owners of the Abidin Daver* [1984] AC 398; ideological or political reason, the experience or inefficiency of the judiciary, excessive delay in deciding case or the unavailability of appropriate remedies are the reason s of injustice.
[1805] Pertoldi, A., Neill, J., (2017), 'Cross-border Litigation Perspective', Herbert Smith Freehills, Issue 3, pp18-22.
[1806] *Dawnus Sierra Leone v Timis Mining* [2016] EWCA Civ 1066; the foreign courts procedure does not become improper or unjust because it is not the procedure of the courts of England
[1807] Diamond v Sutton [1866] L.R. 1 Ex. 130.
[1808] *Ahmed v Khalifa* [2017] EWHC 1198; the court does not need to be satisfied on the balance of probabilities that a risk will eventuate, it simply needs to be satisfied that there is a real risk.
[1809] *Sim v Robinow* [1892] 19 R. 665; *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460
[1810] It also confirms that even where there is such evidence the publication must be real and substantial in order to ground jurisdiction.
[1811] *NY Times Company v Sullivan* [1964] 84 S.Ct 710; actual malice is defined in the defamation context as 'knowledge, by the person who publishes a defamatory statement, which is false or reckless disregard about whether the statement is true.
[1812] There is no such requirement if an ordinary/natural claimant brings a claim against 'public figure' i.e. the normal rules of libel as discussed in CH.5 will be applied in this scenario.
[1813] Jones, A., and Lidsky, L.B., (2016), 'Of Reasonable Readers and Unreasonable Speakers: Libel Law in a Networked World', Virginia Journal of Social Policy and the Law, Vol 16, Issue 2, pp 29.
[1814] Long, A. B., (2016), 'The Lawyer as Public Figure For First Amendment Purposes', Boston College Law Review, Vol 57, Issue 5, pp 1543-1597.

must show that the defendants lied on purpose[1815] and the judge has to consider the string of responses by the claimants and the defendants to come to a sound conclusion[1816].

There is a huge difference in British and American actual malice requirement for public figures (see Table-13). The only similarity is that the public figures have to show that the false statement was made with actual knowledge. In England, it is still the defendant who has to prove that the statement is based on 'truth'[1817]. The interactive nature of social media may prove difficult in determining when a statement will meet the 'actual malice' standard. If this standard is not met, it will become a non-actionable opinion[1818].

Table-13[1819]: Nature of Actual Malice

Type of claimants	**Actual Damages**	**Punitive Damages**
Public Official/Public Figure and Public Concern	Actual Malice	Actual Malice
Private Figure and Public Concern	At least Negligence	Actual Malice
Private Figure and Private Concern	Negligence (potential strict liability)	No requirement of Actual damage

7.20.1.: English or US standard:

This thesis argues the importance of a globalised system of defamation law; however, it does not approve that there is a need for England to adopt the US-Sullivan standard,

[1815] Messenger, A., (2015), 'False statements and actual malice: Courts rethink what's required to protect free speech; Communications Lawyer : Publication of the Forum Committee on Communications Law, American Bar Association, Vol 31, Issue 3, pp 6-9.

[1816] One of the reasons for the higher standard of "actual malice" or reckless disregard when the defamed is a public figure is that they generally had greater access to media and other outlets to respond to any defamatory statements.

[1817] In English libel law a defamatory comment is assumed to be false unless it can be proved to be true by the person who made it. This is somewhat of a reversal of the traditional criminal law where the burden of proof lies with the accuser.

[1818] *Acobus v Trump* [2017] WL 160316; the court considered the culture of social media and established from the conversation via tweets that the discussion was mere non-actionable opinions.

[1819] Royster, L. K., (2017), 'Fake news: Potential solutions to the online epidemic', North Carolina Law Review, Vol 96, Issue 1, pp 271 at 282.

which would require public claimants to prove actual malice to be successful in libel cases. Besides, for the claimants, Section 1 threshold has already raised the requirements to prove harm (see-7.16). However, actual malice can be used as a 'threshold' for subsequent publications by the same author in accordance with Section 8 of the 2013 Act.

If the claimant has already developed a lousy reputation, will the defendant still be liable for his comments? Warby J[1820] stated that it is not safe to assume that a sarcastic remark will not harm a claimant's reputation because he had already developed a bad name. However, it depends on S1 requirement as Dingemans J[1821] clarified that unless serious harm to reputation can be established an injury to feelings alone, however grave, will not be sufficient. In the *Barron* [2016][1822] case, the judge held that the issue is not the actual state of mind of the defendant but the feelings of the claimant. Have the claimants suffered an additional injury to his feelings because of the defendant's outward behaviour? However, the court failed to establish to what extent a pre-existent bad reputation is acceptable? A person can have a low opinion of another, and yet the other's reputation can be harmed by a fresh defamatory allegation. It proves that if a public figure is hated for a particular act, it does not imply that any other allegations cannot defame them.

7.21.: Free speech or social media defamation:

"Freedom of speech is a principal pillar of a free government; when this support is taken away, the constitution of a free society is dissolved, and tyranny is erected on its ruins - Benjamin[1823]".

Freedom of expression is a fundamental right of every individual (see-5.8.3). This liberty is crucial for individual dignity because it forms essential foundations for democracy, the rule of law, peace, stability and participation in public affairs[1824].
The right to freedom of opinion is enshrined in Article 19[1825] to allow:

[1820] *Barron v Collins* [2017] EWHC 162 (QB) at [56].
[1821] *Sobrinho v Impresa Publishing SA* [2016] EMLR 12 at [46].
[1822] *Barron v Vines* [2016] EWHC 1226 (QB) at [22].
[1823] One of the founding fathers of the United States, Benjamin Franklin.
[1824] EU (2014), 'Guidelines on freedom of expression online and offline': Online Url https://ec.europa.eu/europeaid/sites/devco/files/170703_eidhr_guidelines_single_02_freedom_expression_on_off_0.pdf [Assessed 19th May 2018].
[1825] Articles 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR); Puddephatt, A., (2011), 'The Importance of Self Regulation of the Media

1. The right to seek and receive information
2. The right to impart all kinds of information, regardless of media or frontiers

7.21.1.: Article 10:

Art 10[1826] also obliges the states to respect, protect and promote this fundamental-right but it is subject to some qualifications in member states[1827]. Every sovereign nation adopts different standards concerning freedom of speech[1828]; in England, these are more constrained than other countries[1829]. Gross LJ[1830] prosecuted a group of people who had shouted slogans to British soldiers: "burn in hell", "baby killers" and "rapists". He defended their prosecution because it was not a breach of their right to freedom of expression under Article 10. In the Reynolds case, the court established that protection of reputation is a matter of public interest, which now allows the interest in reputation to compete on a broader ground with free speech[1831]. Lord Nicholls[1832] stated: 'reputation is an integral and important part of the dignity of the individual. It also forms the basis of many decisions in a democratic society which are fundamental to its well-being.

In the 'Twitter Joke Trial[1833]', Paul tweeted about airport closure in cold weather and caused a flight being delayed. His tweet did not cause fear in those who read it. The High Court concluded that the 2013 Act did not create an exception to freedom of speech so its traditional standards must be upheld. The court[1834] pointed out that freedom of expression does not provide a license to ruin reputations. A user hidden behind the cloak of anonymity can share a post and consider himself to be free of any

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in Upholding Freedom of Expression', UNESCO, Communication and Information Debate Series, No 9, BR/2011/PI/H/4.

[1826] The Human Rights Act 1998, Ch. 42, Schedule 1, Part I, Article 10 - Freedom of expression.

[1827] *Handyside v the UK* [1976] ECtHR Jud No. 49; ideas that may be regarded as controversial by the authorities, including views that may shock, offend or disturb is defined subjectively.

[1828] Not all speech is protected by freedom of expression rights, and not all protest is legitimate in the eyes of the state. People cannot say whatever they want and get protection for their comments by tacking on a couple of qualifying words (protection, freedom, Art rights).

[1829] In the US "hate speech" is generally protected under the First Amendment to the US Constitution.

[1830] *Munim Abdul and Others v Director of Public Prosecutions* [2011] EWHC 247 (Admin).

[1831] Barendt, E., (2009), 'Freedom of Expression in the United Kingdom under the Human Rights Act 1998', Indiana Law Journal, Vol 84, Issue 3, pp 4.

[1832] *Reynolds v Times Newspapers* [2001] 2 AC 127; explains freedom of expression in terms of the public interest, in receiving and imparting information in the context of a democratic society.

[1833] *R v Paul Chambers DPP* [2012] EWHC 2157, the judge concluded that sending a message of a menacing character by means of public electronic communications on 'Twitter' is contrary to Section 127(a) of the Communications Act 2003.

[1834] *Seguin v Lentini et al* [2010] ONSC 6364.

possible liability for defamation[1835]. That assumption is incorrect because the court will weigh the conflicting interests to see if an action is available for the victim. The court can ask the content provider to reveal the identity of the authors of defamatory posts (see-5.9.3.1). This will balance one's right to protect his or her reputation against the recognised concern for personal privacy and the fundamental right of freedom of expression.

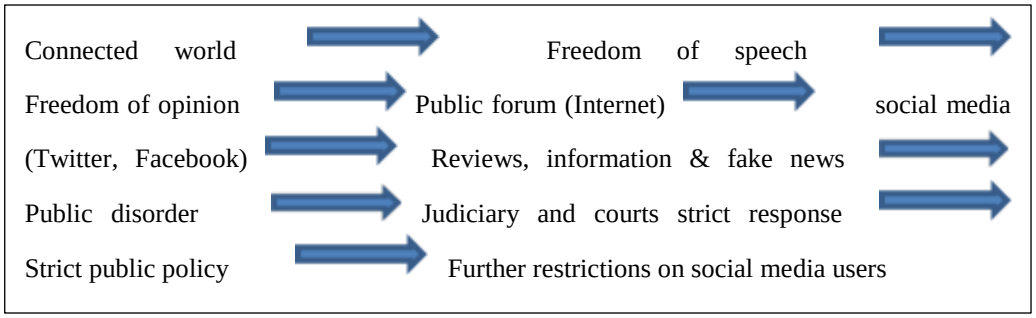
7.21.1.: Social media changes:

Traditionally, different media and communications were regulated by different norms and principles (see-2.10.1). These separations of media are less relevant for cyberspace because all forms of communications are also available online. Online communication infrastructure, itself is converging and is increasingly interdependent because every communication commonly utilise the spectrum used for television, radio, 3g and 4g networks. The users in these fields are interdependent, from telecommunications providers to social media providers and content generators, like traditional news companies. This convergence has created a chaotic arena, which is difficult to define, understand and appropriately regulate. The changes social media has brought to the traditional concept of freedom of expression can be understood from an idealistic viewpoint (see Picture-5).

The Key:

The blue arrow → means 'leads to'

Picture-5:



[1835] Gerrie, W., (2018), 'Say What You Want: How Unfettered Freedom of Speech on the Internet Creates No Recourse for Those Victimized', Catholic University Journal of Law and Technology, Vol 26, Issue 1, pp 64.

7.21.2.: Social media challenges:

The challenge presented by social media is to understand how this new environment shapes freedom of speech (see-2.5.1.3). Traditionally, it always has focused on who controls content, regardless of the technology that carried that content (see-2.10.4). For instance, the type of camera or printing press to convey content was never important because the device could not change/edit the content. The only content controllers were journalists, editors, publishers or censors. However, in social media everybody has the authority to change or edit their message (see-5.8).

7.21.3.: New tools for freedom:

The newly invented devices and applications allow the encrypted and secure exchange of data between users, who maybe unable to access such information via offline communications. There are following tools help promote freedom of expression (see Table-11):

Table-14: Tools for Freedom of Expression

Tool	**Type**	**Freedom to express**
Remote	Mobile, tablet, camera devices	Stream information directly via the internet
Bluetooth	Audio portals, wireless connections, hotspot	This technology can exchange data from a single server
Encryption software	Tor, VPNs, RSA	Ensure high degrees of privacy for communications
Digital media	Social media, Sound cloud, Ushahidi platform	Records evidence of ill treatment or abuse or share content, video or audio

Defamation law potentially affects everyone and getting it right is crucial for the society we want to live in. It must balance the interests of everyone and discourage those with power from using defamation law as a weapon[1836]. The right to freedom of speech cannot be used as a shield to publish whatever an individual thinks is right, which may go against British societal values and privacy (see-7.21). The correct balance of free speech, freedom of expression, privacy and reputation can only be obtained by making the publishers accountable for their actions, which fall outside the sphere of reasonableness[1837]. It may force social media users to efficiently vet their sources and not publish remarks that come from dubious sources, whether they write about public or private persons. It will provide the defendants with an ability to demonstrate that their publication is substantially 'true', if the matter reaches the courtroom. It is the true meaning of freedom of speech balanced against individual reputation.

7.22.: Summary:

The unreliability of the interpretation of Section 1 is resulting in uncertainty of libel judgments, which may discourage potential victims from issuing proceedings. It can be a further deterrent for small businesses because Section 1 (2) demands proof of 'financial loss', which may be costly to prove. The certainty which parliament intended to bring balance to online defamation has not yet achieved by the 2013 Act. However, there is an appeal pending in the Supreme Court, which will provide the desired stability. So the social media libel claimant/defendant can rely on this Act to produce predictable results.

7.22.1.: Conclusion of Theme-1:

Section 9 narrows English courts' jurisdiction for non-EU domiciled defendants over libel claims relating to online publication. The analysis envisaged in Section 9 is very similar to a traditional "forum non-conveniens" analysis. The burden has been shifted to the claimant to prove England is the 'convenient forum'. There is not enough case law to explore the relationship between Section 9 and the traditional forum test. This theme

[1836] Powerful figures accused of corruption can pay the mafia to attack dissident websites. Software can be built to screen out free expression information from its search results (through software installed on users' computers that blocks access to certain Web addresses).

[1837] Watson, R., Roldan, R., & Faza, A., (2017), 'Toward Normalization of Defamation Law: The UK Defamation Act of 2013 and the US Speech Act of 2010 as Responses to the Issue of Libel Tourism, Vol 22, Issue 1, pp 63.

endorses that private international law rules have made very smooth transition to cyberspace transactions. However, there is a need of slight modification in the process of identifying publishers and adding actual malice criteria for subsequent publication by the same publisher. The Civil Procedure Rule Committee must include these relevant factors of Section 9 as a part of CPR to avoid confusion between forum test and jurisdiction consideration.

7.22.2.: Conclusion of Theme-2:

The issue of the applicable law raises problems, but this theme contests that these problems are not genuinely new because cyberspace publication amplifies pre-existing matter. In social media, many 'causes of action' can arise simultaneously because the material can be downloaded anywhere. If a single court assumes jurisdiction of claims arising out of defamation in multiple domains, the claimant may still need to prove the content of the applicable law in each place his reputation has been damaged to be adequately compensated, which may be prohibitively expensive (see-2.11.5). The difficulties in resolving these questions mean that online defamation, a twenty-first-century problem, is regulated by a nineteenth-century rule. However, with a little modification, these rules can be applied with more consistency. We live in a physical world with geographical boundaries. Social media networks make us the residents of 'Socialistan/Faceebookstan/Twiterstan'. Legal protection in the physical world and freedom of speech is also needed in the digital world. Hence, the law must adopt the 'choice of law' rule, which looks to the law, common to all parties in both worlds. It is only possible if 'choice of law' is defined, using a connecting factor based on nationality[1838], where it is used to register on these networks. This theme recommends that application of traditional rules do not dis-integrate cyberspace.

7.22.3.: Conclusion of Theme-3:

If the claimants are successful in their application to serve outside jurisdiction, the amount of time and expense necessary to satisfy Section 9 (3) requirements will inevitably prove too much for other claimants. Seeking to determine that no other jurisdiction is appropriate out of all the possible domains in the age of social media can

[1838] Menthe, D., (1998), 'Jurisdiction in cyberspace: A theory of international spaces', Michigan Telecommunications Technology L Rev, Vol 4, pp 69.

be an extremely onerous task. If the defamatory material is published online as well as in hard copy, the task would be impossible for a claimant. The information would be likely to be available only to the publisher who put the material into circulation[1839]. In the faster medium of communication, this is a backwards step in preserving the boundaries of justice in the digital era so this process must be straightforward and simplified. This theme suggests that a defendant's knowledge that his statement can cause harm to other's reputation should be sufficient to support personal jurisdiction. This theme recommends that civil procedural rules need modification when serving outside jurisdiction. It also recommends that courts should proceed in the absence of anonymous defendants to stop defamatory material being re-published

7.22.4.: Conclusion of Theme-4:

The application of Section 9 to social media publications imposes an unreasonable and disproportionate restriction on a claimant's right to access court specifically when the number of downloads in England is low. Similarly, S1 creates difficulties for individual claimants to satisfy 'serious harm' to reputation. It may also be true when the harm to reputation is grievous but it is difficult to provide evidence or witnesses. Raising the bar for English claimants cannot guarantee protection for freedom of speech because if a claimant suffered less harm in England, he may still have the right to bring a case in England. This theme rejects the argument that S9 will reduce libel tourism because a resident of England must have the right to start proceedings in English courts. However, this bar could be upheld for foreign claimants who merely abuse the system for favourable circumstances. For the argument, that Section 9 will also only allow the claims which have a stronger link in England: Common sense suggests that the more tenuous the connection with England, the harder it will be for the claim to survive application of the traditional rule[1840]. If the claimant has no ties with England, he may not suffer any damage in England so if a foreign-based claimant wins a case in England, the damages will be limited to England[1841]. Besides, it allows every individual a right to a fair trial[1842] because local victims can start proceedings in England.

[1839] This thesis acknowledges that even the publisher may not know, because hard copies may be resold and circulated abroad by a domestic wholesaler to whom the publisher has sold copies.
[1840] *Eyre v Nationwide News Pty Ltd* [1967] N.Z.L.R; without the proof of substantial harm, court may award very minimal damages, which will be fair for both claimant and defendants.
[1841] *Flymenow Ltd v Quick Air Jet Charter GmbH* [2016] EWHC 3197 (QB); as per Warby J – the claimant succeeded but recovered damages of only £10.
[1842] *Bin Mahfouz v Ehrenfeld* [2005] EWHC 1156 (QB).

This theme recommends that the Defamation Act 2013 need updating, especially section 9 and section 1. However, if traditional test of 'Jameel abuse' is continued to apply, it may produce fairness for both claimants and defendants. Similarly, to maintain 'freedom of speech' via social media courts must give regards to the context in which initial publication was made.

7.23.: Conclusion:

This chapter concludes that the Defamation Act 2013 (somehow) balances free speech and personality rights and it can be applied along with CPR rule to cyberspace defamation. This chapter rises following questions:

7.23.1.: Question to policymakers:

England can curtail freedom of expression[1843] on the basis of 'national interest, public health and security, morals, and territorial integrity' to prevent public disorder and combat crime. Can policymakers allow freedom of speech and endanger national sovereignty? Freedom of speech is a tool that has been aiding ISIS and Al-Qaeda in recruiting teens to fight in Syria, so if it is a matter of national security is it not better if freedom of expression is compromised? (See-9.7).

7.23.2.: Question to lawmaker:

Why go to such lengths to tighten defamation laws because the claimants in publication cases can retain the right to bring a claim under the Data Protection Act[1844]. Will strictness of the system not cause people to seek other solutions and open a floodgate of case law[1845]? (See-9.8.).

[1843] *Dulgheriu v London Boroughof Ealing* [2018] EWHC 1667.

[1844] *HH Prince of Morocco v Elaph Publishing* [2017] EWCA Civ 29; the court applied Tugendhat J principle from the *Society v Kordowski* [2011] EWHC 3185 case that it is appropriate to plead under the DPA in addition to a claim in libel/harassment. The different causes of action are directed to protecting different aspects of the right to private life: The relevant provisions of the DPA include the aim of protection from being subjected unfairly to distress. LJ Simon concluded tha Data protection claims can be 'linked to' claims in defamation.

[1845] This tightening up of English defamation law has driven creative litigation because areas of privacy, character assassination and data protection emerged. Similarly, the claim of malicious falsehood is also providing fertile ground.

7.23.3: Question to governing bodies:

The concept of freedom of expression comes from traditional world whereas it has not been updated for digital communication. Why the courts are unable to describe to what extent they can allow free speech via social media? (See-9.9).

7.23.3.: Question to content providers:

ISPs, media platforms and social networks demand immunity in the event of legal issue; however, they allow anonymous users to use this privilege. Why content providers cannot develop a policy where they block anonymous transactions? (See-9.10).

7.23.4: Question to social media users:

Every social media user wants the security of his reputation but also has an interest in free speech. The law intended to balance these interests is so complicated because it is not even understood by the people to whom it applies. Why users cannot raise this issue to their respective platforms? (See- 9.11).

Chapter 8

Review of Findings

Suggestions and Recommendations

8.1.: Preview of the thesis:

"Cyberspace should not be seen only from a technological perspective, but as phenomena that have already had and will continue to have an ever-greater impact throughout our daily lives and functions of our societies[1846]".

Previous chapters evaluated that social media users will always be subject to 'conflict of laws' rules because cyberspace has no clear jurisdictional and geographical parameters. However, inventing an entirely new legal order for cyberspace is not necessary because the complications related to 'jurisdiction rules' are overemphasised and can simply be resolved by using traditional laws. Besides, whatever transaction is taking place in cyberspace, it takes place in a physical location by real users. The only difference is there are often more chains in social media. Social media reinforces the idea of freedom of expression and freedom of speech but the dynamic feature of instant forwarding implies that there is a need for a legal privacy plan for every individual user[1847].

Over time, it becomes difficult to balance freedom of speech with reputation because there is a very fine line, which demarcates one's freedom of social media use and the violation of others. For instance, the drawing of a sketch may be a bit of fun for a society but it can also degrade the followers of a religion. For example, a substandard and disagreeable act of drawing a cartoon sketch of the Muslim Prophet (saw) by a Danish publisher. It may not be defamatory in all jurisdictions, but it can be accessed anywhere via social media[1848]. Freedom of expression is the most important constitutional freedom so it has to be evaluated whether it is threatened by religious and political critics. Besides, the accessibility of social media is a privilege, which is unrestricted: It disregards religion, region or geography but depends on the network, protocols and modem. This privilege upholds the promise of Article 19 of the Universal Declaration of Human Rights - access to information irrespective of frontiers (see-2.3.2). An argument can be made that this privilege is at the expense of fundamental human rights of privacy and reputation.

[1846] Challenges of Cyberspace, online available at, http://www.gcsp.ch/News-Knowledge/Publications/Future-Challenges-in-Cyberspace [Assessed 27th May 2017].

[1847] Most social networking sites contain built-in moderation tools, special social relevance ranking and privacy settings. Public setting will allow everybody to follow. Comments-box enables user to comment on contents, which may be shown in public news feed; however, a message can be sent privately.

[1848] A cartoon/sketch/emoji is a harmless way of having fun but offence may be taken by the concerned person because hate speech, racist remarks and religious sentiments have different meanings for different people.

8.1.1.: Design of this chapter:

"The internet is so instant; people have a thought, write it and publish. But it's not just limited to their friends seeing it; I think people forget that aspect[1849]".

This chapter will acknowledge the outcomes and findings of previous chapters and then offer suggestions and recommendations. It is elaborated in Table-15:

Table-15: Design of Review

#	OBJECTIVE	DERIVED FROM	WHAT IS ACHIEVED
8.2	Acknowledgement	Literature review	This thesis agrees with the established ideas identified via selected literature
8.3	Findings	Previous conclusions	This thesis reviews the important concepts already drawn from the conclusion of previous chapters
8.4	Suggestions	Critical review	It suggests how to improve the concept already acknowledged at **8.2**
8.5	Recommendation	Application of cases	It offers solution to modify and improve the concepts of the findings at **8.3**

[1849] http://www.watoday.com.au/wa-news/what-was-first-facebook-defamation-case-means-to-you-and-me-20150105-12ib74.html [Assessed 20th August 2017].

8.2.: Acknowledgement:

This research acknowledges that:

1. Cyberspace is a functional place where information links and websites are posted for the public at large[1850]. Although it is not located at any particular location yet, it is available to everyone around the globe[1851]. It is the most prominent way of conveying information and communicating views and opinions, which makes every social media user a potential publisher. Thus, the freedom of speech and expression is curtailed because of the fear of suit for defamation, which has become very common. This thesis urges that religious and political beliefs should be disregarded in social media publications to reduce the number of claims. A test of motive/intent must be introduced to balance it with freedom of speech because religious and cultural beliefs should not be allowed to dictate casual communications.

2. This thesis acknowledges that traditional libel laws are unable to keep pace with the strident changes imposed by heterogeneous social cyberspace. These laws were principally framed at either a time when most defamatory publications were spoken or the product of unsophisticated printing. There are practical limitations in the application of the principles derived since the 18th-century cases to social media disputes that arise in the 21st-century (see-2.10.2). However, it recommends to continue using traditional laws with little modifications (see-7.10).

3. Social media has become a liability landmine because these content aggregation sites carry the risk of libel reaching a broad audience. The designing of social sites encourages online sharing even without any fact-checking. Users are incentivised to fake popularity and unprecedented fame hence they disregard any regulation or morality. For instance, a negative Facebook status, a political Tweet, a searing Yelp review and an edited photograph posted on Reddit may receive many views, likes and comments. This thesis urges that the media organisations must spread awareness among its subscribers to avoid sharing

[1850] Menthe, D. C., (1998), 'Jurisdiction in Cyberspace: A Theory of International Spaces', Michigan Telecommunications & Technology Law Review, Vol 4, Issue 1, pp 69-103.
[1851] Djavaherian, K., (1998), 'Reno v ACLU', Berkeley Technology Law Journal, Vol 13, pp 371-388.

content without authentic source. If a defamatory content/article is shared via social media, its recovery and damage control is not easy to handle; besides, the process is time-consuming (see-5.9.3).

4. The existence of a website at a particular location cannot be used as a ground to assume jurisdiction because by the location of a website a court cannot determine the behaviour of its user (see-5.6). The user's response is not directly dependent on the area of a website, which is accessible at various locations simultaneously (see-2.10.2). It is urged that if a user has displayed interest to reach the audience at a particular location then 'location of the website' may suffice to trigger the personal jurisdiction. A user will be considered to display the intent to reach a particular audience by:

    a. Advert in that location
    b. Targeting the subject matter in that forum
    c. Interacting by way of exchanging information in that location

8.3.: Findings:

This research finds that:

1. It may not be practical to make new statutes and treaties for cyberspace because it may take decades. However, individual provisions can be created for the areas where cyberspace has fundamentally built new issues. This thesis finds that social media libel is one of the areas that required modification. It is suggested that libel laws must be harmonised globally to avoid the issue of jurisdiction and choice of law (see-7.13).

2. The authorities want to use traditional laws even though the internet revolution demands a redefinition of several key legal terms, especially for social media libel (see-2.10.1, 8.3.3). Although the conventional rules assist in establishing internet jurisdiction but the length of time, concurrent jurisdictions, delays in justice, enforcement of judgment and forum shopping are factors, which not only raise concerns about legal uncertainty but can also diminish the confidence of cyber-users. Online transactions are now a necessity of the commercial world

and the future of International trade. This facility will only encourage trading organisations if businesspersons are assured of a satisfactory outcome in case of a conflict (see-2.10.2).

3. The 2013 Act tried to control/abolish 'libel tourism' by making it compulsory for the claimant to prove that there is a real and substantial connection in England. It may be difficult/almost impossible to determine a real and substantial connection with 'a single forum' (see-7.19). The over-reliance on Facebook, Twitter and other social networking communications make it even harder to determine jurisdiction in online libel cases. This complication can also affect public policy because multinational websites may deliberately choose English law to reduce litigation costs[1852]. The judiciary must specify the claimants who need to prove 'real connection' (see-7.3) or Parliament must amend the 2013 Act for British claimants.

4. The law of defamation seeks to protect the legitimate interest of a person's reputation within society. It is an aspect of civil law, which supports and protects the value of 'human dignity', regardless of being in virtual space[1853]. The Defamation Act 2013 is a breakthrough for libel victims: A defamatory e-mail sent to a wrong address, something tweeted inadvertently, or a Facebook post mistakenly shared are all potential defamation (see-2.10). Similarly, re-sharing a post, which has already been published, cannot be a defence because every publication is considered a separate libel (see-2.11.3). The most prominent challenge, after social media expansion, remains to maintain a balance between freedom of speech and preservation of privacy. The 2013 Act contains elements to cover online libel. There may be individual provisions, which are unable to cope with the ever-changing dimensions of social media communication (see-7.21). However, with further interpretation from the judiciary legal harmony is achievable.

[1852] Wolff, T. B., (2017), 'Choice of law and jurisdictional policy in the federal courts', University of Pennsylvania Law Review, Vol 165, Issue 7, pp 1847.
[1853] *Oleg Petrovich Orlov & Human Rights Centre Memorial v Russia* [2016] No. 48557/10 ECHR.

8.4.: A few modest suggestions:

The findings discussed above allow this study to offer some suggestions for improving current legal framework.

1. Taking legal action against 'what is being published' is not the best approach to moving forward concerning social media libel because merely re-tweeting/liking a post should not invoke legal action. Online communication requires awareness and a sense of respect and harmony. Hence, social networking sites must inform their users about the consequences of using certain words, without any proof of 'truth' (see-5.8.2).

2. There must be a uniform treaty for 'choice of law[1854]' for social media defamation cases, which would pave the way for an easy solution. The users may be aware of their local laws but do not know the laws of the countries where they interact using social networks. Hence, 'choice of law' treaty will make sure that a user is prosecuted under the laws of their domicile state, the laws they are aware of or the laws they prefer to be prosecuted by (see-4.3.3).

3. English judges want the continuity of their Victorian private international law, which can adequately be maintained for cyberspace defamation if the criterion for jurisdiction is further simplified (see-7.7). Different sets of procedural rules also exist for EU and non-EU litigants. Once the UK is out of the EU by 2019, it will by default be clarified because the courts do not have to apply the EU system for member state domiciled users. However, meanwhile, a logical assumption of jurisdiction may allow existing traditional laws to serve social media defamation disputes efficiently and predictably. The defendants must be considered resident of cyberspace so a discretionary jurisdiction can be assumed for every social media user to prosecute the matter on an urgent basis (see-4.1.1).

[1854] Hill, J., (2004), 'Choice of Law in Contract under the Rome Convention: The Approach of the UK Courts', International and Comparative Law Quarterly, Vol 53, pp 325-350.

4. It is also suggested that international efforts to introduce more predictable methods of determining jurisdiction such as a universal code would avoid the problem of determining jurisdiction. The rapid development of cyberspace has made national borders seemingly irrelevant. There is no doubt it would be much easier to make cyberspace more peaceful by inventing a universal jurisdictional code unrelated to physical boundaries. Still, sovereign states have and will continue to focus on physical borders with distinct priorities i.e. political will (see-2.5). Even the EU, which claims to be a borderless 'United States of Europe', reflects national priorities when it comes to jurisdiction in cyberspace. This thesis suggests, after foreseeing, the impossibility of a universal cyber-code, that the criticism of applying traditional jurisdictional rules is unjustified. Therefore, Parliament must authenticate the CPR rules and avoid adding different jurisdiction provisions with every Act (See-1.11, 2.6.2).

5. The main issue for social media libel is if the time-limit rule, for bringing proceedings can expire (see-2.11). Under Section 8 single publication rule, distribution of the material by the same author will not initiate a fresh cause of action (see-2.11.3). There is no recent case law to show whether the material had been downloaded in the year preceding the proceedings would be a question of fact for the judge to decide. It is suggested that the limitation period should be changed to 3 years for social media libel and put a stop to unlimited liability in social media. The judges must have the discretion to extend it if the harm suffered after that limit because in social media content can be re-generated at a later stage (see-7.13)

6. The 2013 Act may not be regarded as an excellent piece of legislation as it provides a critique of previous law, yet it has nothing unique to guide libel law in an era of expanding forms of expression. It also retains the hierarchical approach to libel where traditional news media represent the pinnacle of free speech; a remarkable notion when one considers the exponential growth of social media platforms (see-2.13). This thesis suggests that S1 and S9 can be further modernised concerning changes brought by social media defamation (see-7.7 and 7.16). This amendment would allow judges to respond to the complications occurring due to modern technologies by maintaining defamation rules applicable to the offline world.

7. The 2013 Act provisions seem tighter but not rigid; although they become more complicated when applied to social media based libel. It is suggested that it should be maintained for foreign claimants because public figures prefer England's repressive libel laws to get more compensation (see-7.20). However, there is a need to simplify this criterion if the claimant is a British national/domiciled/resident or holds property in England (see-7.8).

8. The libel laws should be sufficiently flexible to apply to all media and maintain harmony between freedom of expression and personal reputation. However, the time required to satisfy court at the preliminary stage may make the claimant suffer further irreparable harm (see-7.1). It is even immense if a business reputation is at stake. The judges have to analyse a balance between privacy rights and freedom of speech, which may waste valuable time (see-7.21). It is suggested that an injunction must be granted at the initial hearing, on the balance of probability. It can be revoked if the libel condition is not satisfied, however it may save the victim any further distress.

9. The thesis challenges the qualities of hypothetical referees in defamation cases and suggests that they need to be determined based on a realistic rather than an idealistic view of late modern, multi-mediated societies (see-7.14 and 5.5.1). There is no mechanism to test 'the nature or degree' of any anger, which the published words provoke in some of their readers, assist in deciding, what they mean. Similarly, the hypothetical reader must implement the context of publication.

10. To save court time and avoid pre-action protocols, this thesis suggests using an online dispute resolution centre, which can work like eBay or PayPal resolution services. This online service must be in addition to court hearing; however, the litigants must be given a chance to resolve their issue online without involving another party. It should be a quick process and if any of the litigants are unhappy, they can proceed towards the pre-action protocol leading to court proceedings.

8.5.: Recommendations:

These recommendations are based on the fact that social media publishers know that their activity is available to everyone without any geographic restrictions.

1. The recent growth of cyberspace has re-emphasised the relevance of jurisdiction in international law. If more emphasis is added in simplifying rules for establishing authority, parties may be tempted to consider out of court settlements because jurisdiction will consistently determine outcomes of cases[1855]. Regardless of jurisdiction criterion, the country which has the prime advantages including the availability of witnesses, technical assistance, economic benefits or the involvement of international organisations in regulating a conflict should be granted jurisdiction because it is in that country's interest to resolve the matter more efficiently [1856](see-6.9.1.2).

2. The advancements in smartphone-stimulated technology allow subscription to social networking anywhere, which makes the publisher bound to take account of the law of every country on earth (see-5.8.4). If there are defined boundaries in cyberspace, the publisher could efficiently prevent anyone, anywhere, downloading the information, it put on its web server. Hence, in the absence of boundaries, a website can be present in every jurisdiction so a defendant's mere approach to a website should not be sufficient to prove a substantial connection with that forum (see-5.6). It is recommended that the claimant must show that the defendant directed or intended to direct his libellous communication in that particular forum[1857]. The claimant must explain how the defendant's conduct relates to the substance of the asserted libel claim. Nevertheless, the judge must ascertain whether the defendant had reasonable knowledge that his activity could affect the forum concerned.

[1855] Timothyy B. N., (1998), 'Personal Jurisdiction and Cyberspace: Establishing Precedent in a Borderless Era', Common Law Conspectus, Vol 6, pp 101.
[1856] Gray, T., (2015), 'Minimum Contacts in Cyberspace: The Classic Jurisdiction Analysis in a New Setting', The Journal of High Technology Law, Vol 1, pp 85-86.
[1857] Robertson, Burke, and Charles, (2017), 'The Business of Personal Jurisdiction', Case Western Reserve Law Review, Vol 68; Case Legal Studies Research Paper No. 2017-11, pp 775.

3. The law of defamation pre-dates the social networking era. Its provisions are considered flexible enough to cover any form of communication. That is why judges have satisfactorily applied traditional principles for establishing liability in online libel cases (see-7.9). However, internet technology and social media have changed how a defamatory article can be republished. There are various instances, where the traditional law could not be applied to address some of the new ways of communication to cause harm to others (see-7.8). Judges are recommended to hold an international conference to grasp the global views of the judiciary. It may allow English judges to give due regard to foreign 'applicable law' and harmony can be achieved.

4. This thesis recommends a modified judicial practice for cyberspace defamation cases, in which judges dis-credit the question of whether traditional 'private international law' rules have any relevance in cyberspace at all. This judicial preference must impose traditional reasoning onto social media libel, without thinking further about how social media technology works i.e. court judgments should be based on equity and fairness rather than on 'doctrinal research'.

5. This thesis recommends that only selected judges, who undertake social media training, could prosecute cyberspace cases. Overtime, judges are either curious or maybe uninformed regarding social media and are unable to balance their capabilities with legal principles that evolve incrementally. Uncertainty in decisions proves that judges often prefer to resolve libel issues focusing on traditional constitutional beliefs that do not consider new forms of sociability brought about by social networks and our interaction with them (see-2.6.2).

6. Libel has evolved in social media so traditional standards of messaging and elements of proof may vary in discrete forms of digital correspondence. It is recommended that traditional literary or grammatical standards of interpretation for social communications and digital texting should also depend on the ability of perpetrator (a nine year old cannot be held liable for sharing libellous remarks) (see-5.10). Similarly, the 2013 Act must be updated to adopt social networking technology i.e. professional and ordinary users must be treated according to the damages suffered rather than everybody treated under the same law. Due regard must be given to the ability, literary skills, available editing

resources, the device used and legal advice made available to individual defendants.

7. Educational and awareness programs for youth are recommended. Service providers and content providers must take on a responsibility to make the users understand a uniform behavioural code before they can upload their profiles. Their subscriptions to social networking sites could only be allowed if they fully appreciate pro-active, self-regulation and inter-disciplinary mechanisms. This approach justifies the immunity granted to the 'content providers'. It may also help in eradicating the socially offensive conduct of youth. It will also train young users to keep themselves safe from ISIS and Al-Qaeda online-agents who groom children for their purpose (see-2.1).

8. It is also recommended to only allow social media accounts after facial recognition rather than email and SMS code confirmation. This can produce instant accountability and trace the perpetrators. Similarly, social media for 'under 16' should be separated from adults to protect teens.

8.6.: Answer to 1st research question:

The technological advances presented by the internet and cyberspace do not radically challenge the application of private international law rules. This research affirms the appropriateness of applying traditional laws to cyberspace transaction. However, alternative methods of service should be adopted to speed up the preliminary process (It is detailed further: See-9.2.1).

8.7.: Answer to 2nd research question 2:

This thesis approves that the 2013 Act is a step forward in adopting social media communication. It is, however, recommended that more clarity is needed in the application of S1 and S9 especially when it is applied to social media transactions (It is detailed further: See-9.2.2).

Chapter 9

CONCLUSION AND SOLUTION

Resolution and Concluding Remarks

9.1.: The finale:

"Cyberspace should not be seen only from a technological perspective, but as phenomena that has already had and will continue to have an ever-greater impact throughout our daily lives and functions of our societies"[1858].

'Personal jurisdiction' grants a court the statutory power to prosecute a defendant based in other geographic locations (see-4.1, 6.2.2). To date, there are no universal rules of jurisdiction concerning cyberspace-based activities. Conventional rules of private international law are still applied but not without practical difficulties. The law that relates to social media technology requires additional judicial skills to analyse complex communication. It is not just the legal skills to adopt the technology but also the lack of statutory guidelines, which produces uncertainty. This inability to understand the structure of the internet means courts provide their interpretation, which causes traditional rules to be altered to suit the circumstances (see-7.9). It becomes even harder for social media based libel, which provides instant re-sharing because (see-2.5.1.2):

1. Social media networks are growing, over time these traditional rules may become radically different

2. It is difficult to follow the precedent of previously decided cases because of the evolving nature of social media[1859]

The growth of jurisdictional law, which is very unsatisfactory when compared to instantaneous social networking, has challenged the traditional concepts of the allocation of court power (see-2.6.2, 2.7.2). The operational realities of cyberspace disputes, the issue of jurisdiction and the necessity of making suitable policies to cope with these matters present a significant challenge to lawmakers (see-2.5). Concerning common law rules on jurisdiction, legislative bodies have to make sure that legal authorities are equipped with technological skills and the required resources to handle cyberspace disputes.

[1858] http://www.gcsp.ch/News-Knowledge/Publications/Future-Challenges-in-Cyberspace [Assessed 27th February 2017].
[1859] These networks allow 'anonymity'-which makes it difficult to trace defendant.

9.1.1.: Judiciary response to social media challenges:

Constant evolution of social media poses its own unique difficulties for judges and presents a myriad of challenges for the courts. The judiciary responded to these challenges efficiently. Despite the possible vast range of issues, this thesis focused principally on the following:

9.1.1.1.: The application of jurisdictional rules:

Social media has challenged the current legal system, but the courts have tried to minimise this challenge regarding lack of physical presence by developing various tests (see-7.10). English courts have developed from 'the intent', 'purpose', and other factors of the website's accessibility to assume jurisdiction (see-7.15). Similarly, in social media based libel, various tests (actual malice and harm threshold) have been designed to assume jurisdiction over a foreign defendant (see-7.16, 7.20).

9.1.1.2.: The applicability of different set of laws:

There are different sets of laws available for the courts to resolve a single online transaction, which produces legal ambiguity and judicial uncertainty (see-7.8). The analysis of the 2013 Act shows that it is primarily left to judges to decide jurisdiction where a conflict of law does not play a constructive role (see-7.7, 7.11).

On the other hand, the evaluation of traditional rules reveals that the existence of the rule of law in cyberspace depends upon the ability of ordinary courts to resolve complex social media libel claims (see-7.4). The court's power is limited to geographical parameters while cyberspace is not localised but international. This lack of congruence between the geographic limitations of courts and the global nature of cyberspace is proving an obstacle in civilising cyberspace through law[1860]. However, English courts responded to this challenge by allowing alternative methods of service and proceeding in the absence of the defendants and challenging anonymous defendants (see-7.5, 7.6, 7.18)

[1860] Kahin, B., & Nesson, C., (1997), 'Borders in Cyberspace' (The MIT Press, London) , pp 165.

9.1.1.3.: The advancement of communication technology:

Smartphones and built-in social networking are rapidly changing according to the needs of international commerce. It is not possible to create a uniform code because if the nature of transactions changes then applicable laws need to be changed (see-2.1). The internet continues to be a growing realm that continuously creates complex issues for courts because there has been a behavioural shift in social media (see-2.5). In today's social media world, it has become more comfortable and rewarding than ever to share false information about anything because the material published via social media is unregulated (see-2.10). The judiciary minimised this issue by confronting anonymity and maintaining a fair balance between freedom of expression and reputation (see-7.21). The addition of 'actual malice' will prove fruitful in regulating endless prosecution under Section 8 (see-7.19)

9.2.: The conclusion:

This thesis concludes that private international laws have been reformed for centuries and cannot be abolished. Jurisdictional laws can still be applied to social media to ascertain court's competence. Civil procedural rules need some amendments to overcome the ever-changing behaviour of social media networking sites. The assumption of jurisdiction in common law is only possible after the proper service of the writ. In social media, there could be situations where libel could cause immense foreseeable harm or where an urgent injunction is required to stop libellous publication. If it is impossible to serve a claim form to a foreign defendant or only the location of the ISPs is known then the embassy of defendant's country should be served to start proceedings in the forum (see-7.8.1). Regardless of jurisdiction, the forum courts should be empowered to grant an injunction to stop such transactions and embassies should provide every possible help during this process. High Commissions can argue that they have enough work already but to facilitate prosperous social communication they also have to play a role so that the problems of jurisdiction may be reduced i.e. they should develop a mechanism to trace the defendant through their IP address in conjunction with relevant authorities of the defendant's countries.

This thesis concludes its arguments by explaining the answers to the research questions:

9.2.1.: Explanation of answer 1:

Cyberspace cannot fulfil its promise if online communication continues to be subject to hundreds of different procedural and substantive rules only because the material can be accessed in every nation of the globe. Social media is part of the common heritage of humanity. Access to its benefits is a legitimate right for all people. Its benefits can only be enjoyed without drafting comprehensive legislation, or by harmonising the municipal laws, which exist here and there. To wait for legislatures or multilateral international agreement to provide solutions to the legal problems presented by cyberspace libel is an 'agonisingly slow' process of law-making. The Ministers can take a long time to debate the need for an urgent reform in the area of cyberspace libel. Hence, judges are urged to address the immediate need to piece together a coherent transnational law appropriate to the 'digital millennium'. However, the international legal cooperation of 'Bar regulatory authorities' is required. The new regulations would need to respect the entitlement of each legal regime not to enforce foreign legal rules contrary to binding local law or essential elements of domestic public policy. Nevertheless, within such constraints, common law would adapt itself to the central features of the internet, namely its global, ubiquitous and reactive characteristics. In the face of such traits, to apply old rules, created on the assumptions of geographical boundaries, would encourage an inappropriate and usually ineffective grab for extra-territorial jurisdiction.

9.2.2.: Explanation of answer 2:

Since the launch of the Defamation Act 2013, the traditional burden mechanism has shifted towards the claimant, which provides an unfair advantage to a defendant. This Act makes it compulsory for the foreign claimant to file a legal action in England when the subject matter has 'a real and substantial connection' in England. The analysis of social media defamation explained that it is almost impossible to determine a real and substantial connection with any forum. The over-reliance on Facebook, Twitter and other social networking communication prove it even harder to establish jurisdiction in online libel cases. In the current political environment, every country may want to prosecute its citizens within its legal system. However, once a proper protocol, as established in English private international law, is followed, English court can assume

jurisdiction over any internet user. The same can be noted by the US and Chinese private international law provisions. On the other hand, conviction of internet users anywhere in the world, for their actions on the internet may also be against the founding principles of sovereignty. If it is accepted that global liability exists for social media libel, it implies that the value of the domestic law is diminished.

9.2.3.: The vision of this research:

This thesis provides a roadmap for libel victims to find preliminary information regarding their claims. It interprets the 2013 Act provisions and recommends an urgent update to accommodate CPR rules along with defamation laws. This thesis gives a vision to the lawmakers to encourage the technology giants (Google, Yahoo, Twitter, Facebook etc.) to update technology in such a way as to allow the defendant/publisher the freedom to choose:

1. Who can download the content
2. Which geographic locations cannot open published

If voluntary action by social media companies is insufficient, governments should consider direct regulation. The purpose of legislation should not limit the right to access but only to eliminate all abuses of that right. This legislation must also ensure a proper balance between freedom of expression and an effective fight against the dissemination of all views of a racist or humanly demeaning nature. It must respect privacy and anonymity as essential values, any abuse of these values must be dealt with unequivocally. In internet defamation cases, a fair balance must be struck between the domestic tort law and rights of free expression. Until the content providers create new software, they must also be held liable.

Meanwhile, the 2013 Act is a step in the right direction for resolving the problem of libel tourism. Rules that were not fit for the internet have been updated so that unfavourable decisions will not be made. However, the flexibility permitted in both the jurisdiction (S9) and choice-of-law (S8), to revert to traditional rules respectively is worrying. There is not enough case law to show how the English courts have responded with the discretion provided. This thesis nevertheless submits that this approach does

not go far enough in resolving the problem of libel tourism and that more can, and should, be done.

9.3.: Contributions to existing literature:

This thesis questioned the desirability of tailoring a common law decision to suit a particular social media publication. This research identified that doing so presents problems where the latest developments rapidly overtake social media sites. New features are designed to attract more users. A legal rule created for social media libel will very soon be out of date.

1. The thesis seeks to harmonise conflict rules, which must be distinguished from the harmonisation of substantive law (see-2.8.3). The argument adds to existing literature which says that it is more efficient to have one single set of conflict of law principles to reduce the cost of litigation and to increase the certainty and predictability of the outcome (see-4.3.2.3)

2. A uniform code is impossible to create because political preferences[1861] are substantial obstacles to achieving a harmonised approach to jurisdictional issues in online communications. Meanwhile, to avoid conflicting interpretations, the courts have to reduce political involvement when dealing with online disputes (see-8.4.4)

3. The judges must use the laws of 'comity' in deciding social media libel to protect freedom of speech and avoid the issue of enforcement. This requires the authorities, when developing laws or making decisions that may impact on other jurisdictions, exercise due care and respect for the other's law. In this way, a judgment can be binding across the globe and other nations' laws can also be preserved (see-4.2.2, 7.1).

4. Traditional grounds of 'domicile', nationality' or 'the place of publication', for assuming jurisdiction in online defamation are not suited to social media (see-1.3.1, 4.5.4). This thesis contributes by proposing that the 'knowledge of the defendant that his publication is accessible worldwide' can be used as a ground

[1861] The political will is against the idea of the universal code.

to establish jurisdiction (see-4.6). Cyber-users must be considered citizens of cyberspace, regardless of their worldly status, which may allow the judge to assume authority on a discretionary basis (see-4.1.1).

5. Before passing any judgment on foreign social media users, courts must analyse what international implications their decision would have on the public in other states. If their decision is against the public policy of other jurisdiction, the judges must decide based on equal-laws[1862]. This review may help in the application of foreign judgments within those jurisdictions.

6. Local courts must be equipped with relevant IT skills and judges should work in line with the changes in evolving cyberspace environments. This means that courts should be empowered to amend rules accordingly (see-2.6.2)

7. Can domestic courts be allowed to decide and regulate content outside their borders? The judges are not well equipped to shape national policy that touches not only on free expression rights but also on foreign relations and national IT infrastructure[1863]. However, courts are being forced to do in cases about online content that violates the national law (see-8.5.5)

9.4.: Fill in the gaps:

Cyberspace could be centralised as a single organisation, governed by elected managers who would have complete control over online content, pricing, publishing, communication. Similarly, all other matters relevant to cyberspace must be firmly dealt with by this independent body of online tribunal, which may have no political influence. This independent control unit may have permanent and temporary memberships, which could be created by using the UN equivalent – it could operate independently while retaining harmony among domestic laws. All countries should agree on it and every foreign embassy could accept claim forms to help bring the defendant to the desired forum so that justice can prevail.

[1862] If blasphemy is illegal in other jurisdiction then a decision in England may not be upheld in that jurisdiction and the victim may be left with no remedy at all.
[1863] Keller, D., (2018), 'Global Content Regulation And Jurisdiction: Who Decides?', Stanford Law School, https://cyberlaw.stanford.edu/blog/2015/06/global-content-regulation-and-jurisdiction-who-decides-0 [Assessed 18th August 2018].

This thesis fills in the gaps:

1. A separate private legal system for cyberspace should be introduced, independent of individual government interference. This system should be outside the existing private international laws and public judicial systems. The internet is a network of networks, therefore, for internet disputes; international law of private international laws should be agreed. This private international law must be a standard code acceptable to all domestic courts, which must incorporate domestic CPR rules.

2. For social media libel, if a defendant is anonymous, the right approach is defined under CPR 23.11 (1) - the courts should proceed with the claimant's unchallenged particulars of the claim (see-7.6). The evidential examination at the preliminary stage involves an unnecessary expenditure of time and resources, which is contrary to the overriding objective of justice and fairness (see-2.10.3).

3. If a user is an unidentifiable, unknown or hiding identity, the relevant high commission of the country of the geographic (based on IP address) should be served with a 'summons'. Embassies must have cyberspace-monitoring units, which should identify anonymous users (see-7.4.2). Proceedings should begin even if the defendant cannot be located and relevant high commission must be held responsible along with the ISP and website operator.

4. No law can provide compensation for the emotional disturbance caused by defamation. However, this thesis fills in the gap by recommending the courts remedy the unfair disruption in victims 'relational interests', by making defendants write an apology to the victim, on the same forum. In addition to this, the claimant must be given the right to give a reply of the defendant's allegations and the content providers must publish it on the same forum.

9.5.: The solution:

Considering the flexible approach adopted by judges, it can be established that the traditional laws have made a relatively smooth transition into online defamation. Common law jurisdictional concept has adapted convincingly well to the arena of cyberspace. This thesis summarises that most of the rules from the traditional physical world can still be applied to cyberspace libel disputes.

Briefly, this thesis answers the question: Does cyberspace outdate jurisdictional defamation laws – 'NO', it does not. This study establishes that "the common law jurisdiction concept has adapted convincingly well to the arena of cyberspace". Therefore, traditional jurisdiction laws can also be applied to social media libel. There are some suggestions to improve the practical method of assuming jurisdiction and reforming pre-action protocols to apply existing rules with certainty.

9.6.: Future reforms:

Most traditional practices are capable of being implemented without the need for reform to content published/shared via social media. There are specific areas in which customary law produces uncertainty and requires urgent changes – publication, ISPs liability, defamation classes, remedies and applicable law. However, a few reforms may be mandatory concerning social media publications:

1. This thesis offers a future reform to divide social media based on continents. For instance, Asia, Africa, EU, Australia and the US. A service provider can only provide service within specified geographical continents. Online passports (or perhaps passwords) can be created to cross online borders. Service providers must issue warning signs if a user crosses a border without a password. It may slow down the communication; however, limit the abuse, fake news, spam adverts and other improper issues. This can only be created for users who use social media for leisure. Again, a profile can only be created by facial recognition and specific IP address. It will also eliminate anonymous transactions.

2. In future, provisions that are more explicit are needed to clarify the legal positions of ISPs and when they can be held liable for social media libel claims.

3. In future, along with financial compensation, strict remedies must be imposed to vindicate victims' reputation online. Courts must global removal orders[1864] and universal injunctions to give notice to content providers.

4. There is an urgent need to simplify 'choice of law rules' because the applicable law, substantive rights and liabilities are determined by places of publication, regardless of the court in which proceedings are brought and trialled (see-4.3.3).

9.7.: Duties of policymakers:

The infinite cyberspace spans the fragmented patchwork of domestic jurisdictions. This online space does not regard any geographical borders. In social media communication, conflict of jurisdiction is directly proportional to internet connectivity. Online conflicts pose a threat to the established Westphalian system and challenge the traditional modes of legal cooperation to resolve online disputes. The application of conventional territoriality rules concerning sovereignty could put the digital world on a dangerous path if traditional norms are exerted on cyberspace globally[1865]. Social media is open to misuse because breaches and violations can be easily committed through social media (see-2.5.1.1). This justifies security agencies act of monitoring online communication. But this thesis encourages the policymakers to regulate online content in the interests of the public at large, the necessity of which cannot be denied.

The policymakers hold the responsibility to (see-2.5.1):

1. Control the illicit online behaviour by preserving the global nature of cyberspace

2. Secure human rights and digital economy by maintaining international legal cooperation

[1864] *Equustek Solutions Inc. v. Google Inc* [2015] BCCA 265.
[1865] Szigeti, P. D., (2017), 'The illusion of territorial jurisdiction', Texas International Law Journal, Vol 52, Issue 3, pp 369-399.

It is only possible if the institutional gaps in internet governance are minimised by neglecting the Westphalian international system and jurisdictional limitations i.e. for specific issues international cooperation is required. If the policymakers continue to esteem sovereignty, then there will be many pieces of legislation applicable to cyberspace disputes[1866]. For example, the Computer Misuse Act, Communication Act, Website (Operators) Act and Defamation Act 2013 (the 1996 Act is still applicable, as are EU Regulations). In the presence of many pieces of legislation, court cannot be the right place to decide because judges are burdened with applying pre-internet protocols and post-internet policies to determine digital communication conflicts using black letter jurisprudence.

9.8.: Duties of lawmakers globally:

Every country has a different set of legislation, which is applied simultaneously. Social media users cannot be expected to give due consideration to every piece of legislation. These various laws may not fragment cyberspace, but they cannot be substantively compatible. Each sovereign nation will have concerns because each state may want its laws to govern cyberspace cases[1867]. Therefore, there is a global duty upon politicians to find a comprehensive solution. Traditional societies have accepted social developments of digital communication so lawmakers must also move towards global evolution of law and norms.

9.9.: Duties of governing bodies:

The judiciary is requested to urgently clarify whether hitting a 'Like' button during casual conversation carries the same weight as other forms of speech more commonly cited in libel claims. For social media communication, judges must differentiate between casual conversations with formal negotiation. Similarly, there must be leniency where the defendant merely 'like or shared' or used emoji to express, unless an intent to cause harm can be established (see-7.5). It always depends on what a 'like' means and what someone was aiming to achieve with it. A 'like' does not always mean that

[1866] Chapelle, B., (2014), 'Multi-stakeholder Governance - Principles and Challenges of an Innovative Political Paradigm', Wolfgang Kleinwachter Editorial, The Collaborator Steering Group, Edition 1, Series 1.

[1867] Szigeti, P. D., (2017), 'The illusion of territorial jurisdiction', Texas International Law Journal, Vol 52, Issue 3, pp 369-399.

someone likes the content of a post because the 'like' is the standard option. People may like a terror video just to show their sympathy to the victims. Similar can be stated about 'emoji's', 'sad', 'wow' or 'angry' faces. Besides, these emoticons do not change the inherent ambiguity of what someone means to say with it.

The judiciary must update its training systems according to new technological advances. It must also include social media and digital communication. The Bar councils and solicitor authorities must seek international cooperation on these issues and the judges must give/take briefings to modernise the overall system to accommodate digital communication.

9.10.: Duties of content providers:

This thesis firmly rejects the idea that ISPs/content providers should be allowed to regulate clients' communication. It may lead to content providers monopolising online communication, especially considering a recent breach of consumer privacy by the Facebook-Cambridge data analytical scandal[1868]. Besides, if these private bodies exercise some control over communication, they become primary publishers. But when it comes to accepting liability, they insist that they are mere content providers and demand immunity. Just like spy agencies and security firms, if they regulate the content, they must also accept responsibility for what they allow. It is a longstanding saying that 'you wouldn't sue the newsstand vendor', however, if they exert control over communication, they are not merely distributors but publishers. Besides, allowing these private networks the right to edit/censor their user's communication can restrict freedom of speech and privacy. There is a need for clear guidance on what content is permitted and what should be banned. This research recommends content providers to take more responsibility and spreading greater awareness to their users. They should educate them by explaining the consequences of their communication.

9.11.: Duties of social media users:

Considering the risks involved, today's youth must get awareness and training so they start taking responsibility for their online activities. They must be aware of global

[1868] BBC (2018), 'Cambridge Analytica: Facebook data-harvest firm to shut' online https://www.bbc.co.uk/news/business-43983958 [Assessed 11th June 2018].

prosecution if they harm others reputation. Freedom of expression is a statutory right but other users deserve privacy and respect. It is not only about publishing but ‘reposting’ and ‘retweeting' can also carry potential liability.

“Concluding Remarks”

This is a democratic world and cyberspace is a commonplace. Certain governments (China, Russia, Iran, North Korea, Saudi Arabia, Egypt, Turkey, India, Israel and Pakistan) are crafting independent policies to content restrictions which undermine speech freedom and restrict freedom of accessibility. Religious, cultural, political and national priorities cannot be allowed to compromise social media communication. These rights of freedom of speech and freedom of information have been bestowed upon us by our forefathers in the name of individual liberty, freedom and right to access to information. This was the vision behind the creation of the internet to allow freedom of information.

This thesis demands that it is the time to move suggestions to the right forum to avoid fragmentation of cyberspace. It invites foreign ministries to come together and create a universal foreign policy and make cyberspace a ‘lowest common denominator’ subject to the sum of all countries laws. It will authorise courts to give worldwide effect to their decisions without undermining sovereignty of other countries.

These arguments conclude the thesis.

BIBLIOGRAPHY

This bibliography follows the standard of 'Bradford University Law School Research Thesis' (see Appendix-2). This bibliography has the following orders:

1. Alphabetical order
2. Numerical and chronological order

To list the surname of the author this thesis uses alphabetical blocks. For instance, the cases starting with letter A will be placed under the heading A (but in no particular order). The chronological order is applied based on the dates of the decision of cases or publication of the books or articles.

This bibliography is divided into two sections: Primary and secondary resources

1. Primary sources
    b. Cases
    c. Statutes
    d. Acts

2. Secondary sources
    a. Books
    b. Journal articles
    c. Blog
    d. Online resources
    e. Relevant Websites

A. LIST OF PRIMARY RESOURCES

This list contains the Statute, Act, Sections and court decisions

A

1. A v Google New Zealand Ltd [2012] NZHC 2352
2. A.B. v Bragg Communications Inc [2011] NSCA 26
3. AAA v Unilever PLC Kenya [2017] EWHC 371
4. Abbott v Econowall UK Ltd [2016] EWHC 660 (IPEC)
5. ABCI v Banque Franco-Tunisienne [2003] EWCA Civ 205
6. Abela v Baadarani [2013] UKSC 44
7. Acobus v Trump [2017] No 153252/16, WL 160316
8. Adams v Cape Industries [1990] 2 WLR 657
9. Adams v Cape Industries Plc [1990] Ch. 433
10. Aerospatiale v Lee Kui Jack [1987] AC 871
11. Ahmed v Khalifa [2017] EWHC 1198
12. Ahuja v Politika Novine I Magazini [2015] EWHC 3380 (QB)
13. AK Investment CJSC v Kyrgyz Mobil Tel Ltd [2011] UKPC 7
14. Al-Bassam v Al-Bassam [2004] WTLR 157
15. Albon v Naza Motor Trading & Tan Amin (No. 2) [2007] EWHC 327
16. Al-Haddad v British Broadcasting Corporation REF Claim No HQ16D00807
17. Allen v Thomson Newspapers, Inc [2005] No. 04-1344 CA
18. Alsaifi v Amunwa [2017] EWHC 1443
19. Altimo Holdings Ltd v Kyrgyz Ltd [2012] 1 W.L.R. 1804
20. Alvaro Sobrinho v Impresa Publishing SA [2016] EWHC 66 (QB)
21. American Banana Co v United Fruit Co [1909] 213 US 347
22. Ames v Spamhaus Project Ltd [2015] 1 WLR 3409 at [52]
23. Amin Rashid Corp v Kuwait Insurance [1984] 1 AC 50 at 65G
24. Amoudi v Brisard [2006] EWHC 1062
25. AMT Futures Ltd v Marzillier [2017] UKSC 13
26. Anbananden Sooben v Eshan Badal [2017] EWHC 2638 (QB)
27. Anderton v Clwyd CC [2002] EWCA Civ 933
28. Anglia v Finders Genealogists Ltd [2016] EWHC 297
29. Anisminic Ltd v Foreign Compensation Commission [1969] 1 All ER 208
30. Applause Store & Firsht v Grant Raphael [2008] EWHC 1781 (QB)

31. Appleby Global Group LLC v BBC and Guardian [2018] EWHC 104

32. Arkwright v Byanston Insurance [1990] 3 WLR 705

33. Asia Pacific v Hanjin Shipping & MV [2005] EWHC 2443

34. Ave Point v Power Tools [2013] 981 W. D. Va. 496

35. Axe Market Gardens v Craig [2008] Axe CIV 485-2676

36. Axel Springer AG v Germany [2014] ECHR 745

B

37. Bacon v Automatic Inc [2011] EWHC 1072 (QB)

38. Baglow v Smith [2015] ONSC 1175

39. Banco Santander v Metro Do Porto S.A. [2016] EWCH 465

40. Bank of Boroda v Nawayny Marine Shipping [2016] EWHC 3089

41. Barron v Collins [2017] EWHC 162

42. Barron v Vines [2016] EWHC 1226

43. Barron v Vines [2016] EWHC 1226 (QB) at [86]

44. Barton v Wright Hassall LLP [2016] EWCA Civ 177

45. Bata v Bata [1948] 92 SJ 574

46. Baturina v Times Newspapers Ltd [2011] 1 WLR 1526

47. Bayat Telephone Systems v Lord Cecil [2011] EWCA Civ 135

48. Bear Sterns Plc v Forum Global Equity Ltd [2006] EWHC 1666

49. Berezovsky v Michaels [2000] 2 All ER 986

50. Berkoff v Burchill [1996] 4 All ER 1008

51. Bertwistle v Conquest [2015] QDC 133

52. Bestolov v Povarenkin [2017] EWHC 1968

53. Bethell Ltd & Bethell Plc v Deloitte & Touche [2011] EWCA Civ 1321

54. Beynon v Manthey [2015] QDC 252

55. Bilta (UK) Ltd v Nazir [2015] UKSC 23

56. Bin Mahfouz v Ehrenfeld [2005] EWHC 1156

57. Black v Breeden [2010] ONCA 547

58. Bloomsbury Publishing v News Group [2003] 1 WLR 1633

59. Bolagsupplysningen v Svensk Handel [2017] (C-194/16)

60. Bolton v O'Brien [1885] 16 LR 97 at 108

61. Bonnard v Perryman [1891] 2 Ch. 269 CA

62. Bonnick v Morris [2003] 1 AC 300

63. Booth v Phillips and Others [2004] 2 Lloyd's Rep 457

64. Brealey v Royal Perth Hospital [1999] 21 WAR 79

65. Brett v Colchester NHS Foundation Trust [2014] EWHC B17

66. Brett Wilson LLP v Persons Unknown [2015] EWHC 2628

67. Brightside v RSM UK Audit [2017] 1 WLR 1943

68. British Chiropractic Association v Simon Singh [2009] HQ 08X0265

69. British Columbia v Aviva Insurance [2011] BCSC 1399

70. Brown v Innovatorone plc [2010] 2 All ER 80

71. Browne v DC Thomson [1912] SC 359

72. Brownlie v Four Seasons [2017] UKSC 80

73. Bruno Lachaux v Aol (UK) Ltd [2015] EWHC 2242 (QB)

74. Bryanston Finance v De Vries [1975] QB 703

75. Bukovsky v Crown Prosecution Service [2018] EMLR 5

76. Bunt v Tilley [2006] EWHC 407 (QB)

77. Burdick Superior Court of Orange City [2015] Case No G049107

78. Burger King Corp v Rudzewics [1985] 471 U.S. 462

79. Burnham v Superior Court [1990] 495 U.S. 604

80. Burnham v Superior Court [1990] 495 U.S. 604

81. Burstein v Times Newspapers Ltd [2001] WLR 579

82. Bussey v Jason Page [2015] EWHC 563

83. Byrne v Deane [1937] 1 KB 818

C

84. Cairns v Modi [2012] EWHC 756 (QB)

85. Calder v Jones [1984] 465 U.S. 783

86. Campbell-James v Guardian Newspapers [2005] EMLR 24

87. CAN Insurance Ltd v OD International [2005] EWHC 456

88. Canada Trust Co v Stolzenberg [1998] 1 WLR 547

89. Capital Bank v Henty [1882] 7 App Case, at 744-745

90. Caretech Community Services Ltd v Berry [2017] EWHC 1944

91. Carleton Condominium Corporation v Yahoo [2017] ONSC 4385

92. Carvalho v Hull Blyth [1979] 3 ALL ER 280

93. Carvill America Inc v Camperdown UK Ltd [2005] 2 Lloyd's Rep 457

94. Cassell v Broome [1972] UKHL 3

95. Cassidy v Daily Mirror Newspapers [1929] 2 KB 331on 706

96. Chadha v Dow Jones [1999] ILPr 829

97. Charleston v News Group Newspapers Ltd [1995] 2 AC 65

98. Chauvy v France [2005] 40 EHRR 610

99. Chris Gayle v Fairfax Media [2017] NSW SC

100. Church of Scientology v Commissioner of Police [1976] 120 SJ 690

101. Cianci v New Times Pub [1980] 639 F.2d 54

102. Clarkson v Person Unknown [2018] EWHC 417

103. Clay Corporation v Colter [2012] 30 Mass. Law Report 536

104. Cleveland Museum v Capricorn International [1990] 2 Lloyd's Rep 166

105. Club Resorts Ltd v Van Breda [2012] SCC 17

106. Colt Industries v Sarlie (No.1) [1966] 1 WLR 440 (CA)

107. Compagnie Maritime SA v Compagnie Tunisienne [1971] AC 572

108. Cook v Virgin Media & McNeil v Tesco [2015] EWCA Civ 1287

109. Cooke and Midland Heart Ltd v MGN [2014] EMLR 31

110. Cooley v Ramsey [2008] EWHC 129

111. Corp of Ireland v Compagnie des Bauxites de Guinee [1982] 456 US 694

112. Cranfield v Bridgegrove Ltd [2003] EWCA Civ 656

113. CSI Manufacturing Ltd v Dun and Bradstreet [2013] IEHC 547

114. Cullen v White [2003] W ASC 153

115. Cumming v Scottish Daily Record and Sunday Mail [1995] EMLR 538

116. Cundall-Johnson v Whipps [2007] EWHC 2178

117. Curves International, Inc. v Archibald [2011] NSSC 217

D

118. Dabrowski v Greeuw [2014] WADC 175

119. Dallah Real Estate & Tourism Co v Pakistan [2010] UK SC 46

120. Dank v Nationwide News Pty Ltd [2016] NSWSC 295

121. Dar Al Arkan v Majid Al-Sayed Bader [2014] EWCA Civ 715

122. Davidson v Annesley [1926] CH 692

123. Davison v Habeeb [2011] All ER (D) 205

124. Dawnus Sierra Leone v Timis Mining [2016] EWCA Civ 1066

125. Dee v Telegraph Media Group Ltd [2010] EWHC 924 (QB)

126. Defteros v Google LLC & Google Australia [2017] VSC 158

127. Delfi AS v Estonia [2015] ECtHR 64669/09

128. Denny v Mertz [1982] 106 Wis. 2d 636, 674

129. Denton v TH White Ltd [2014] EWCA Civ 906

130. Derby v Weldon [1990] Ch. 48

131. Derbyshire Council v Times Newspapers [1993] AC 534

132. Diamond v Sutton [1866] L.R. 1 Ex.130

133. Digital News Media v Mokbel [2010] 30 VR 348 NSWCCA 125

134. Dinyer-Fraser v Laurentian Bank [2005] BCSC 255

135. Dods v McDonald (No 2) [2016] VSC 201

136. Donoghue v Hayes [1831] Hayes 265

137. Dow Jones & Co v Jameel [2005] E.M.L.R. 16

138. Dow Jones v Gutnick [2002] HCA 56

139. Dr Insurance Co v Central National Insurance [1996] 1 Lloyd's Rep 74

140. Duffy v Google [2015] SASC 170

141. Duke of Brunswick v Harmer [1849] 14 QB 185

142. Dunlop Pneumatic Tyre v Vorm Cudell [1902] 1 KB 342

E

143. E. Hulton Co v Jones [1910] AC 20 HL

144. Eastwood v Holmes [1858] 1 F&F 347 at 349

145. EF Hutton & Co (London) Ltd v Mofarrij [1989] 1 WLR 488 (CA)

146. El du Pont de Nenours v Agnew & Kerr [1987] 2 Lloyd's Rep 585

147. Elias, Hadford & Folwer v Rolling Stone Case [2017] CV 2465

148. Elliot v Tomkins [2014] NSWDC 55

149. Elliott v Rufus [2015] EWCA Civ 121

150. Elmes v Hygrade Food Products PLC [2001] EWCA Civ 121

151. Eric Gasser GmBH v Misat Srl [2003] E.C.R. 1-14693

152. Erst Group Bank AG v JSC "VMZ Red October" [2013] EWHC 2926

153. Excelsior v Salisbury & Johnson [2002] EWCA Civ 879

154. Eyre v Nationwide News Pty Ltd. [1967] N.Z.L.R

F

155. Farah v Esquire Magazine [2013] No. 1:11-cv-01179

156. Ferguson Shipbuilders v Voith Hydro GmbH [2000] S.L.T. 229

157. Fire Clean LLC v Andrew Tuohy [2016] WL 3952093

158. Firth v State [1998] N.Y.2d 365

159. Flood v Times Newspapers Ltd [2012] 2 AC 273

160. Flymenow Ltd v Quick Air Jet Charter GmbH [2016] EWHC 3197

161. Fox v Graham Group Ltd [2001] CHD 26

162. Freeguard v Martlet Homes Ltd [2008] EWCA Civ 1577

163. Fullam v Newcastle Chronicle & Journal [1977] 1 WLR 651

G

164. Garcia v Tahoe Resources [2017] BCCA 39

165. Garthwaite v Garthwaite [1964] CA, P 356

166. Gasque v Inland Revenue Commissioners [1940] KB 80

167. Gee 7 Group Ltd v Personal Management Solutions [2016] EWHC 891

168. Ghanam v Does [2014] 845 N.W. 2d 128

169. Ghannouchi v Al-Arabiya [2007]EWHC 2855

170. Giduck v Niblett [2014] No. 13CA0775

171. Gill v Anagnost, Crews and Grenier [2017] US

172. Global Multimedia Ltd v Ara Media Services [2007] 1 ALL ER

173. Godfrey v Demon Internet [1999] 4 All ER 342

174. Godwin v Swindon BC [2001] EWCA Civ 1478

175. Goldsmith v Bhoyrul [1998] Q.B. 459

176. Google Spain, Google Inc v AEPD [2014] CJEU Case C–131/12

177. Google v Trkulja [2016] [2016] VSCA 333

H

178. Haaretz.com v Mitchell Goldhar [2018] SCC case no 37202

179. Hadford & Folwer v Rolling Stone [2017] 16-2465 (2d Cir)

180. Halsey v Milton Keynes General Trust [2004] EWCA Civ 576

181. Handyside v the United Kingdom [1976] ECtHR Jud No. 49

182. Hardie v Herald & Weekly Times [2016] VSCA 103

183. Harrods v Dow Jones (2003) EWHC 1162

184. Her Majesty's Advocate v William [2002] SLT 139

185. HH Prince of Morocco v Elaph Publishing [2017] EWCA Civ 29

186. Higginson Securities Ltd v Hodson [2012] EWHC 1052

187. Hills Contractors v (1) Smith (2) Struth [2013] EWHC 1693

188. Hiranandani-Vandrevala v Times Newspapers Ltd [2016] EWHC 250

189. Hird v Wood [1894] 38 SJ 23

190. Hockey v Fairfax Media Publications Pty Limited [2015] FCA 652

191. Hoddinott v Persimmon Homes Ltd [2007] EWCA Civ 1203

192. Hoffman v Washington Post Co [1977] 433 FSupp, 600 DDC

193. Hourani v Thomson and others [2017] EWHC 432 (QB)

194. Howard Kennedy v The National Trust for Scotland [2017] EWHC 3368

195. HRH Prince Alwaleed v Forbes [2014] EWHC 3823

196. Huda v Wells and Ors [2017] EWHC 2553 (QB

I

197. Independent Newspapers v Ireland [2015] ECHR 28199/15

198. Iran Continental Shelf Oil v IRI International Corp [2002] CLC 372

199. Iran v Berend [2007] EWHC 132 (QB)

200. Irish Shipping Ltd v Commercial Union Assurance Plc [1991] 2 QB 206

J

201. Jackson v ROI Senator [2018] Listed for hearing

202. Jacobus v Trump [2017] No. 153252/16, WL 160316

203. Jameel v Dow Jones & Co [2005] EWCA Civ 75

204. J'Anson v Stuart [1787] 1 Term Rep 148

205. Jerome Jones v Birmingham City Council [2018] EWCA Civ 1189

206. Jeynes v News Magazines Ltd [2008] EWCA Civ 130

207. John Russell Ltd v Cayzer, Irvine & Co Ltd [1916] 2 AC 298 at HL

208. Jones v Chichester Harbour Conservancy REF

209. Jones v Skelton [1963] UKPC 29

210. Jong v HSBC Private Bank (Monaco) SA [2014] EWHC 4165

211. Joseph v Spiller [2010] UKSC 53, [2011] 1 All ER 947

212. JSC BTA Bank v Ablyazov [2011] EWHC 2988

213. Judith Vidal-Hall v Google [2015] EWCA Civ 311

K

214. Kaefer Aislamientos v AMS Drilling Mexico [2017] EWHC 2598

215. Kaki v National Private Air Transport Co [2015] EWCA Civ 731

216. Kalfelis v Schroder, Munchmeyer, Hengest & Co [1988] ECR 5565

217. Kamran Malik v Donal Trump [2016] EWHC QB

218. Keeton v Hustler Magazine [1984] 465 US 770

219. Kelly v Levick [2016] QMC 11

220. Kennedy v Aldingto [2005] CSOH 58

221. Kennedy v National Trust for Scotland [2017] EWHC 3368 (QB)

222. King v Alme and Nott [1700] 91 Eng. Rep. 790

223. King v Lewis [2005] ILPr 16

224. Knott v Sutherland [2009] Alta.Q.B.M

225. Knuppfer v London Express Newspaper [1944] AC 116

226. Kolden Holdings v Rodette Commerce [2008] 1 Lloyd's Rep 434

227. Komaneni v Rolls-Royce Industrial Power (India) [2002] IL Pr 40

228. Konkola Copper Mines Plc v Coromin [2006] 1 Lloyd's Rep 410 (CA)

L

229. La Bourgogne [1872] L. R. 7 Q. B. 293

230. Lachaux v Independent Print Limited & Ors [2015] EWHC 2242 (QB)

231. Lachaux v Independent Print Ltd [2017] EWCA Civ 1334

232. Lachaux v IPL [2018] 2 WLR 387

233. Laurie v Carroll [1958] 98 CLR 310

234. Leech v Green & Gold Energy & Anor [2011] NSWSC 999

235. Lewis v Daily Telegraph [1964] A.C. 234

236. Liberace v Daily Mirror Newspapers [1959] unreported

237. LICRA v Yahoo [2001] 145 F. Supp. 2d 1168

238. Lindon, Otchakovsky-Laurens and July v France [2008] EHRR 35

239. Loutchansky v Times Newspapers Ltd (No.2) [2001] EMLR 36

240. Lubbe v Cape Plc [2000] 1 WLR 1545, at 1561

241. Lucasfilm v Ainsworth [2009] EWCA Civ 1328 [193]–[94]

242. Lungowe v Vedanta Resources Plc [2016] EWHC 975

243. Lysaght Ltd v Clark & Co [1891] 1 QB 552

M

244. MacMillan v Bishopsgate Investment Trust plc [1996] WLR 387

245. Macquarie Bank Limited & Anor v Berg [1999] NSWSC 526

246. Maharanee of Baroda v Wildenstein [1972] 2QB 283

247. Malkarjun v Narhari [1900] 27 IA 216

248. Manchester Corporation v Williams [1891] 1 QB 94

249. Marashen Ltd v Kenvett Ltd and another [2017] EWHC 1706

250. Martin Lewis v Facebook [2018] HC

251. Marzillier, Dr Meier & Guntner v AMT Futures [2015] EWCA Civ 143

252. Masri v Consolidated Contractors Ltd [2005] EWHC 944

253. Maubourquet v Wyse [1867], 1 Ir.Rep. C.L. 471, 481

254. MB Garden Buildings Ltd v Burton [2014] EWHC 431 (IPEC)

255. McAlpine v Bercow [2013] EWHC 1342 (QB)

256. McDonald v Mabee [1917], U.S. 90, No 135 at 234

257. McDonalds Corp v Steel (No. 4) [1995] 3 AER 615

258. McGrath & Anor v Dawkins [2012] EWHC B3

259. McKeogh v John Doe [2012] IEHC 95

260. McKinnon v Government of the USA [2008] UKHL 59

261. McNairn v Murphy [2017] ONSC 1678

262. Melania Trump v Mail Media [2017] SCNY, Commercial Div.650661

263. Messier Dowty Ltd v Sabena SA [2000] 1 WLR 2040

264. Metropolitan International v Digital Trends [2010] 3 All ER 548
265. Metropolitan IS v Designtechnica Corporation [2009] EWHC 1765
266. Mickle v Farley [2013] NSWDC 295
267. Microsoft Corp. v United States [2017] U.S. LEXIS 6343
268. Midland Bank Plc v Laker Airways Ltd [1986] Q.B. 282
269. Mir v ARY Network Ltd & Fayaz Ghafoor [2015] EWHC 2917
270. Miranda v Secretary of State - Home Department [2014] EWHC 255
271. Miss Universe L.P. v Monnin [2013] 952 F. Supp. 2d 591
272. Mitchell MP v New Group Newspapers Limited [2013] EWCA Civ 1537
273. Modi v Clarke [2011] EWCA Civ 937
274. Mohamed Ali Harrath v SPL & Samuel [2016] EWHC 665
275. Mole v Hunter [2014] EWHC 658 QB
276. Monroe v Hopkins [2017] EWHC 433 (QB)
277. Monson v Tussauds [1894] 1 QB 671
278. Montague v Page [2006] OJ No 331
279. Morgan v Oldhams Press [1971] 2 All ER 1156 (HL)
280. MTV Networks v Curry [1994] 867 F. Supp. 203, N.1 (S.D.N.Y)
281. Mujur Bakat BHD v Uni Asia General Insurance [2011] EWHC 643
282. Munim Abdul v Director of Public Prosecutions [2011] EWHC 247
283. Murray v Associated Newspapers Ltd [2014] EWHC 1170 (QB)

N

284. Neilson v Overseas Projects (Victoria) [2005] 221 ALR 213
285. Neiman-Marcus v Lait [1952] 13 F.R.D. 311 (S.D.N.Y)
286. Netherlands v Sweden (The Boll Case) [1958] 55 ICJ Reports
287. Nevill v Fine Art and General Insurance [1897] AC 68
288. New York Times v Sullivan [1964] 376 U.S. 254
289. Newland Shipping & Forwarding v Toba Trading [2017] EWHC 1416
290. Newstead v London Express Newspaper [1940] 1 KB 377 CA
291. Nigel Smith v ADVFN Plc and others[2008] EWHC 1797(QB)
292. Norris v Government of the United States and others, [2008] UKHL 16
293. North Warwickshire Council v Persons Unknown [2018] EWHC 1603
294. Norwich Pharmacal Co v Customs and Excise Comrs [1974] AC 133
295. Novartis Pharmaceuticals UK v SHAC [2014] EWHC 3429 (QB)
296. NPV v QEL & ZED [2018] EWHC 703

297. Nutifafa, Enyonam, Lartisan v International Hospitals Group Ltd [2006] EWCA Civ 21

O

298. Office of Fair Trading v Lloyds TSB Bank [2007] UKHL 48

299. Ogden Vs Ogden [1908] PN6

300. Okpabi v Royal Dutch Shell [2017] EWHC 89

301. Oleg & HR Centre Memorial v Russia [2016] ECHR No. 48557/10

302. Olsen v Facebook Inc [2016] NSSC 155

303. Opthalmic Ltd v Opthalmic Inc [2004] EWHC 2948

304. Oriental Press Group v Fevaworks Solutions [2013] HKCFA 47

305. Owners of Mercedes v Owners Abidin Daver [1984] AC 398

306. Owusu v Jackson [2002] EWCA Civ 877

307. Owusu v Jackson [2005] ECR I – 1383

P

308. Pacific International SC v Soccer Marketing International [2009] EWHC 1389

309. Parker v Schuller [1901] 17 TLR 299 (CA)

310. Parkins v Scott [1862] 1 H&C

311. Paxton Jones v Chichester Harbour Conservancy [2017] EWHC 2270

312. Pennoyer v Neff [1878] 95 U.S. 714

313. Pez Hejduk v Energie Agentur NRW GmbH [2015] Case C 441/13

314. Pfeifer v Austria [2007] 48 EHRR 175

315. Pinner v Pinner [1977] 33NC App 204, 234 SE2nd 633

316. Piper Aircraft v Reyno [1981] 454 U.S. 235

317. Piping Rock Partners v David Lerner Associates [2012] WL 5471143

318. Pippa Middleton & James Matthews v Persons Unknown [2016] EWHC 2354

319. Pirtek (UK) Ltd v Jackson [2017] EWHC 2834 (QB)

320. PJS v News Group Newspapers [2016] UKSC 26

321. PML v Person(s) Unknown [2018] EWHC 838 (QB)

322. Premium Nafta Products v FWI Shipping Company [2007] UKHL 40

323. Prince Al-Waleed v Forbes [2014] EWHC 3823 (QB)

324. Prince of Morocco v Elaph Publishing Ltd [2017] EWCA Civ 29

325. Pring v Penthouse [1982] 695 F. 2d 438

326. Pritchard v Van [2016] BCSC 686

327. Pro-C Ltd v Computer City [2001] 205 DLR 574 (Ont CA)

328. Pullman v Hill [1981] CA 1891

Q

329. QEL & ZED v NPV [2018] EWHC 703 (QB)

R

330. Parkins v Scott [1862] 1 H&C

331. R v Topham [1791] 100 Eng. Rep. 931; 4 T.R. 126

332. Raffelsen Zentral Bank v Five Star General Trading [2001] CLC 84

333. Rai v Bholowasia [2015] EWHC 382

334. Rana v Google Australia Pty Ltd [2013] FCA 60

335. Rayney v Western Australia [2017] WASC 367

336. Re Bonacina [1912] 2 Chapter 394

337. Re Oriel [1986] 1 WLR 1980

338. Reed Elsevier v Bewry [2014] EWCA Civ 1411

339. Regie National Des Usines Renault SA v Zhang [2002] 210 CLR 491

340. Reid v Dukic [2016] ACTSC 344

341. Reno v ACLU [1997] 117 S., Ct. 2329 US

342. Rex v Lord Abingdon [1794] 170 ER 337

343. Reynolds v Times Newspapers Ltd [2001] 2 AC 127

344. Richardson v Facebook [2015] EWHC 3154

345. Richardson v Schwarzenegger [2004] EWHC 2422

346. Rindos v Hardwick [1994] WASC

347. Robert v Kenneth & LU Football Club [2013] 1 WLR 189

348. Robins v Kordowski [2011] EWHC 1912 (QB)

349. Roy Rush v Anor [2017] NSD2179

350. Ryanair Ltd v Fleming [2016] IECA 265

S

351. S & W Berisford plc v New Hampshire Insurance [1990] 3 W.L.R 688

352. Safaricom Ltd v Porting Access [2011] eKLR no 167

353. Safeway plc v Tate [2001] The Times LR

354. Scali v Scali [2015] SADC 172

355. Schapira v Ahronson [1999] E.M.L.R. 735

356. Schibsby v Westenholz [1870] LR 6 QB 155

357. Scott v Sampson [1882] 8 QBD 491

358. Seaconsar Far East Ltd v Bank of Iran [1994] 1 AC 438

359. Seaga v Harper [2009] UKPC 26

360. Seguin v Lentini et al, [2010] ONSC 6364

361. Seldon v Compass Rest [2012] No. 03050/11, WL 5363518

362. Sequa Corp v Aetan Casualty & Surety Co [1990] C.A. No. 89-234-JRR

363. Shaffer v Heitner [1997] 435 U.S. 186

364. Shevill v Presse Alliance SA [1996] HL 26

365. Sim v Robinow [1892] 19 R. 665

366. Simpson v MGN Ltd [2015] EWHC 77

367. Simpson v MGN Ltd [2016] EWCA Civ 772

368. Sioux Transportation v XPO Logistics [2015] W.D. Ark. 20 No. 5

369. Slim v Daily Telegraph [1968] 2 Q.B. 157

370. Slim v Stretch [1936] 2 All E. R. 237

371. Slipper v BBC [1991] 1 QB 283

372. Sloutsker v Romanova [2015] EWHC 2053 (QB)

373. SMAY Investments Ltd v Sachdev [2003] WL 1202657

374. Smith Kline Beecham v GSKline Ltd [2011] EWHC 169

375. Smith v ADVFN plc [2008] EWHC 1797

376. Smith v Royal Society of PCAnimals [2017] EWHC 3622

377. Smith v unknown defendants [2016] EWHC 1775

378. Sobrinho v Impresa Publishing SA [2016] EWHC 66 (QB)

379. Society v Kordowski [2011] EWHC 3185

380. Sonatrach Petroleum v Farrell International Ltd [2002] 1 ALL ER 627

381. South India Shipping v Bank of Korea [1985] 1 Lloyds Rep. 413n

382. Speedie v Sunday Newspapers Ltd [2017] IECA 15

383. Spiliada Maritime Corp v Cansulex Ltd [1987] HL

384. Standard Bank Plc v Efad Real Estate [2014] EWHC 1834

385. Starr v Ward [2015] EWHC 1987 (QB)

386. Steedman v BBC [2001] EWCA Civ 1534

387. Steven Berkoff v Julie & Times Newspapers LTd [1996] Ewca Civ 564

388. Stocker v Stocker [2016] EWHC 474 (QB)

389. Stocker v Stocker [2018] EWCA Civ 170

390. Sube v News Group Newspapers [2018] |EWHC 1234 (QB)

391. Swakopmund Airfield v Municipality Council [2011] NAHC 71

392. Swiss Reinsurance Co Ltd v United India Insurance Co [2004] IL Pr4

393. Szalamay-Stacho v Fink [1947] K.B. 1

T

394. Tamiz v Google Inc [2013] EWCA Civ 68

395. Tardios v Linton [2015] EWHC 2552 (QB)

396. Tehrani v Secretary of State for the Home Department [2006] UKHL 47

397. Texan Management v Pacific Electric [2009] UKPC 46

398. The Bussey Law Firm PC v Page [2015] EWHC 563

399. The El Amria [1981] 2 Lloyd's Rep 119

400. The Folias [1979] AC 685

401. The Kribi [2001] 1 Lloyd's Rep 76 at 87

402. The Sennar (no 2) [1985] 1 WLR 490 (HL)

403. The Siskina [1979] AC 210

404. The Spiliada [1987] AC 460

405. Theedom v Nourish Training [2015] EWHC 3769

406. Theedom v Nourish Training Ltd [2016] EMLR 10

407. Thompson v James [2014] EWCA Civ 600

408. Thorley v Kerry [1812] 4 Taunt 355 at 365

409. Thornton v Telegraph Media Group [2010] EWHC 1414

410. Thornton v Telegraph Media Group Ltd [2011] 1 WLR 1985

411. Three Rivers District v Bank of England (no 3) [2003] AC 1

412. Tiernan v Magen Insurance Co Ltd [2000] ILPr 517

413. Tilling v Whteman [1980] AC 1

414. Tolley v J S Fry and Sons, Ltd [1931] AC 333

415. Training Compliance Ltd v Dewse [2001] CP Rep 46

416. Trump v Tarpley [2016] Md. Cir. No V424492

417. Turcu [2005] EWHC 799 at 105

418. Turner v Grovit [2004] E.C.R. 1-3565

419. Turner v MGN [2005] EMLR 25

U

420. U.S. Telecom Association v FCC [2016] 825 F.3d 674 (D.C. Cir)

421. Umeyor v Nwakamma (Rev 1) [2015] EWHC 2980

422. Undre & Anor v The London Borough of Harrow [2016] EWHC 931

423. United Film Distribution Ltd v Cbbabria [2001] 2 ALL ER 865

424. United Utilities Group Plc v Jayne Hart [2015] EW Misc B48

425. University of Salford v Duke [2013] EWHC 196 (QB

V

426. Vakras v Cripps [2015] VSCA 193

427. Van Breda v Village Resorts Limited [2010] 98 OR (3d) 721

428. Veliu v Mazrekaj [2007] 1WLR 495

429. Vetco Gray UK v FMC Technologies Inc [2007] EWHC 540

430. Vidal-Hall v Google Inc [2015] EWCA Civ 311

431. Vinos v Marks and Spencer plc [2001] 3 All ER 784

432. Vogel v Felice [2005] C A, 6 Dis, No H024448

433. Voth v Manildra Flour Mills Pty Ltd [1990] 97 CLR 124

434. VTB Capital Plc v Nutritek International Corpn [2013] UKSC 5

W

435. Walsh v Latham [2014] WL 618995

436. Watkins v North American Timber [1904] 20 T.L.R. 534

437. Webb v Bloch [1928] 41 CLR 331 at 363

438. Wennhak v Morgan [1888] 20 QBD 635 at 639

439. White v Sweden [2008] 46 EHRR 3

440. Wilkey v BBC [2003] 1 WLR 1

441. William and Glyn's Bank v Astro Dinamico [1984] 1 WLR 438

442. Williams v Central Bank of Nigeria [2013] EWCA Civ 785

443. Williams v State Farm [1994] 229 Conn. 359

444. Wilson v Bauer Media Pty Ltd [2017] VSC 521

445. Wilton UK Ltd & Anor v Shuttleworth & Ors [2018] EWHC 911

446. Wishart v Murray [2015] NZHC 3363

447. Withers v General Theatre Corporation Ltd [1933] 2 KB 536

448. Wolfson v Syracuse Newspapers [1938] 254 App. Div. 211

449. WPP Holdings Italy v Benatti [2008] Lloyd's Rep Plus 20

Y

450. Yeo v Times Newspapers Ltd [2014] EWHC 2853 (QB)

451. Yeo v Times Newspapers Ltd [2015] 1 WLR 971

452. Yeung, Sau Shing Albert v Google [2014] HKCFI 1404

453. Young v New Haven Advocate [2002] 315 F.3d 256, at 262-63

454. Youssoupoff v Metro-Goldwyn- Mayer Pictures Ltd [1934] 50 TLR 581

Z

455. Zahawi v (1) Press TV (2) Press TV Limited [2017] EWHC 1010 (QB)

456. Zall v Zall[2016] BCSC 1730

Relevant Acts

1. Civil procedural rules 1998 (as amended in 2008)
2. Civil Procedure Act 1997, s 1, Sch 1
3. Civil Jurisdiction and Judgments Act 1982
4. Council Regulation 44/2001
5. Common Law Procedure Act 1852
6. Companies Act 1985 [S691, S695, S725, S1139]
7. Draft Defamation Bill HL 203, HC 930-I (2011–12)
8. Explanatory Notes, Defamation Act 2013 (UK), c 26 (2)
9. Equality Act 2010
10. Hansard Col 69 WH 17 December 2008
11. Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, 2001 O.J. (L 12) 1
12. Lugano Convention 1982 Act, Sch 3C (6.7) page num the Impact of S9 ch 2
13. Overseas Companies Regulation 2009, reg 7 (1) page multiple defendant at ch 6
14. Order 1 Rule 1 A of the Rules of the Court of Judicature (NI) 1980 at 5.9.1.1
15. Private International Law (Miscellaneous Provisions) Act 1995
16. Regulation 19 of the Electronic Commerce Regulations 2002
17. Regulation (EC) No 44/2001 –Article 5(3) at 6.5.2
18. Rule of the Supreme Court, Order 10, Rule 1(1) and Order 65, Rule 2
19. Senior Courts Act 1981, s 21(5)
20. The Defamation Act 2013
21. The Human Right Act 1998
22. The Hague Conference on Private International Law 1893
23. The European Convention on Human Rights 1950
24. The Council Regulation (EC) No 44/2001
25. The Data Protection Act 1998
26. The civil procedura (Amendment no 4) rules 2015, SI 2015/1569
27. Universal Declaration of Human Rights (1948)

A. Relevant Sections

Section 11 of the Irish Defamation Act 2009

Section 13 of the Private International Law (Miscellaneous Provisions) Act 1995

Section 35 (A) the Administration of Justice Act 1982

Section 69 the Courts and Legal Services Act 1990

Section 166 (1) of the Broadcasting Act 1990

Sections 4(1) and (3) and (7) of the Theatres Act 1968

Section 1 of the Defamation Act 1952

Section 127(a) of the Communications Act 2003

Section 32 of the Limitation Act 1980

Section 32(4) Data Protection Act 1998 (as amended in 2018)

Section 1 of the Defamation Act 1996

Section 230 (c) of the Communications Decency Act

B. Relevant Articles

Art 2, Brussels I Regulation 2002

Art 1, Luxembourg Protocol 1971

Art 7 (3), Art 18, Art 19, Art 21 & Art 23 of Brussels I Regulation (recast)

Art 1, 3 & 7, The Charter of Fundamental Rights of the European Union

Art 8, European Convention on Human Rights 1950

Art 3(1) of Rome II Convention

Art 10 & Art 7 of ECHR 1950

Article 10 Convention for the Protection of Human Rights and Fundamental Freedoms

Art 6(1) (European Convention 1950) ECHR

Art 3 of The Rome-Convention 1980

Art 3 of The Convention on the Law Applicable to Contractual-Obligations 1980

Art 7 Universal Declaration of Human rights 1948

Article 17 of the International Covenant (Civil and Political Right)

Article 19 (2), International Covenant on Civil and Political Rights, 1966

Art19 Universal Declaration of Human Rights, UNGA, 1948

Art 26 International Covenant on Civil and Political rights 1966

Art 5 Convention of Elimination of All Forms of Racial Discrimination 1969

Art 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR)

BIBLIOGRAPHY

B. LIST OF SECONDARY RESOURCES

B.1.: Books

1. Bartlett, J., (2014), 'The Dark Net: Inside the Digital Underworld', (William Heinemann, London), pp ix
2. Beck, U., (2018), 'What is Globalisation?', (3rd Ed, John Wiley & Sons, US), Ch. 2, pp 64
3. Bell, J., (1987), 'The Acceptability of Legal Arguments', in MacCormick, N. & Birks, P., (eds.), The Legal Mind, (Clarendon Press, Oxford), pp 48
4. Bell, J., (2010), 'Legal Research and the Distinctiveness of Comparative Law', (Oxford University Press, London), pp 129
5. Bell, J., (2011), 'Legal Research and distinctiveness of Comparative Law' in Mark Van Hoecke (eds.) Methodologies of Legal Research, (Oxford, Hart Publishing), pp155-176
6. Bentham, J., (1970), 'An Introduction to the Principles of Morals and Legislation' in (eds); Burns, J.H., & Hart H.L.A., (Clarendon Press, Oxford)
7. Bhuiyan, A., (2014), 'Internet governance and the global south: Demand for a new framework', (1st Ed, Palgrave Macmillan, London), pp 1-19
8. Biegel, S., (2001), 'Beyond Our Control?', (1st Ed, MIT Press, London), Ch1
9. Bing, Bygrave & John (2009), Internet Governance: Infrastructure and Institutions, (1st Ed, Oxford University Press, UK), pp 33, 47, 91
10. Birks, P., (1996), 'Editor's Preface' in Peter Birks (eds.), what are Law Schools For? (Oxford University Press, UK), pp ix
11. Briggs & Rees, (2005), 'Civil Jurisdiction and Judgments', (4th Ed, UK)
12. Briggs, A., (2008), 'Agreements on Jurisdiction and Choice of Law', (1st Ed, Oxford University Press)
13. Cahillane, L., & Schweppe, J., (2016), 'Legal Research Methods: Principles and Practicalities', (1st Ed, Clarus Press), Chapter 2
14. Calster, G., (2013), 'European Private International Law', (1st Ed, Hart Publishing, Oxford), pp 1
15. Campbell, B., (1990), 'Black's Law Dictionary' (6th Ed, West Publishing Co, US), pp 853

16. Casey, E., (2010), 'The Fate of Place: A Philosophical History', (Berkeley: University of California Press, US), pp ix
17. Castells, M., (1996), 'The Rise of the Network Society', (OUP, Oxford University, UK)
18. Cassese, A., (2005), 'International Law', (2nd Edition, OUP, UK), pp 55
19. Cheshire, (1938), 'Private International Law', (2nd Ed, UK), pp 3, 30
20. Cheshire, C., (1935), 'Private International Law', (1st Ed, The Clarendon Press, Oxford), pp ix
21. Chynoweth, P., (2008), 'The Legal Research' in Andrew Knight and Les Ruddock (eds.), Advanced Research Methods in the Built Environment, (Blackwell Publishing, Manchester), Chapter 3
22. Clarkson, V., & Hill, J., (2011), 'The conflict of laws', (1st Ed, Oxford University Press, Oxford), pp 9-12
23. Collins, L., (2006), 'Diecy, Morris & Collins the Conflict of Laws' (14th Ed, Sweet & Maxwell, London), Vol 1, Part 3, Ch. 11 in Jurisdiction and Foreign Judgments
24. Cook, W., (1942), 'Logical and Legal Bases of the Conflict of Laws' (Harvard University Press, Cambridge), Ch. 1 – 3
25. Currie, J.H., (2001), 'Public International Law', (2nd Ed, Irwin Law, Toronto), pp 299
26. David L. G., (2008), 'I-Quote: Brilliance and Banter from the Internet Age', (Lyons Press, UK), pp 6
27. Deakin, S., Johnston, A., & Markesinis, B., (2003), 'Markesinis and Deakin's Tort Law', (7th Ed, Oxford university press), pp 652-655
28. Dicey and Morris, (1993), 'the Conflict of Laws, (12th Ed, Sweet & Maxwell, London), pp 270–271
29. Dicey, A., Morris, J., (1967), 'Dicey and Morris on the conflict of laws', (8th Ed, Stevens, UK), pp 138
30. Dicey, A.V., Morris, C., & Collins, A., (2012), 'The conflict of laws', (Sweet & Maxwell, London), pp 5
31. Dicey, A.V., Morris, C., & Collins, A., (2012), 'The conflict of laws', (Vol 1, Sweet & Maxwell, London), pp38-43, 45-48
32. Dicey, Morris & Collins, (2006), 'The Conflict of Laws', (14th Ed, Sweet & Maxwell, London), pp 305
33. Dicey, Morris and Collins (2012), 'The Conflict of Laws' in Lord Collins (eds.) (15th Ed, Sweet & Maxwell, London), pp [1–020] and [1–022]
34. Dinan, D., (2006), 'Origins and Evolution of the European Union', (1st Ed, Oxford University Press, Oxford), pp 110, 155, 174

35. Dixon, M., (2016), 'A Doctrinal Approach to Property Law: Who Cares and Why?' in (ed) Bright, S., & Blandy, S., (2016), 'Researching Property Law', (1st Ed, Palgrave Macmillan, UK), Chapter 1
36. Dostalek, L., & Kabelova, A., (2006), 'Understanding TCP/IP: A clear and comprehensive guide to TCP/IP protocols' (Packt Pub, Birmingham, UK), pp 626
37. Duckworth, L., (1930), 'The Principles of Marine Law', (4th Ed, Pitman & Sons, London), pp 30
38. Duncan & Neill (2015), 'The law on Defamation', (4th Ed, LexisNexis, UK), para 9.03 to 9.04
39. Dworkin, R., (1977), 'Taking Rights Seriously', (1st Ed, Harvard University Press, US), pp viii
40. Dyreson, C. E., & Snodgrass, R. T., (1995), 'Temporal indeterminacy', in Snodgrass, R.T. (eds.) The TSQL2 Temporal Query Language (1st Ed, The Springer International Series, Springer, Boston), pp 327-346
41. Edward L. R., (2010), 'Legal scholarship' in Dennis Patterson (eds.), A Companion to Philosophy of Law and Legal Theory, (2nd Ed, Wiley-Blackwell, Oxford), pp 548
42. Edwards, L., & Waelde, C., (1997), 'Law & the Internet: Regulating Cyberspace ', (Hart Publication, Oxford), pp 18
43. Fangfei, F.W., (2010), Internet Jurisdiction (1st Edition Cambridge University Press, UK 2010), pp 6
44. Fawcett & Carruthers, (2010), 'Private International Law' (14th Ed, Oxford University Press), pp 353
45. Fawcett, J. and Carruthers, J.M., (2008), 'Cheshire, North and Fawcett in Private International Law' (14th Ed, Oxford University Press, Oxford), pp 235
46. Fentiman, R., (2010), 'International Commercial Litigation', (Oxford University Press, Oxford), pp 195
47. Fink, A., (2010), 'Conducting Research Literature Reviews: From the Internet to Paper' (1st Ed, Sage Publication, London), pp 3
48. Friedrich K. J., (2000), 'Selected Essays on the Conflict of Laws', Transnational Classics in International Law, (1st Ed, Transnational Pub), pp ix
49. George, M., & Dickinson, A., (2015), 'Statutes on the Conflict of Laws', (Hart Publishing, Oxford), pp 375, 457, 517
50. Goldsmith, J., & T. Wu, (2006), 'Who controls the Internet? Illusions of a borderless world', (Oxford & New York, OUP)
51. Goralski, W., (2009), 'The illustrated network: How TCP/IP works in a modern network, (1st Ed, Morgan Kaufmann Publishers/Elsevier, Amsterdam), Chapter 2, pp 428

52. Graveson, R.H., (1977), 'Comparative Conflict of Laws, Selected Essays', (Vol I, North Holland Publishing, Oxford), pp 9
53. Hart, A., (2012), 'The Concept of Law', (3rd Ed, OUP, UK), pp 40
54. Hayward, R., (1999), 'Conflict of Laws', (1st Ed, Cavendish Publishing, London), pp 34
55. Hayward, R., (2005), 'Conflict of Laws', (3rd Ed, Cavendish Publishing, London), pp 1
56. Hayward, R., (2006), 'Conflict of Laws', (4th Ed, Cavendish Publication, London), pp 3
57. Hill, J., (2016), 'Clarkson & Hill's Conflict of Laws', (5th Ed, Oxford University Press), pp 116
58. Holmes, O. W., (2004), 'The Common Law', (1st Ed, Barns & Noble, London), pp 163
59. Hutchinson, T., & Duncan, N., (2010), 'Defining what we do: Doctrinal Legal Research', (ALT, City University London, UK), Chapter 3
60. Jacobstein, J.M., & Mersky, R.M., (2001), 'Fundamentals of legal research', (1st Ed, Foundation Press, UK), pp 1
61. James & McMahon, (2013), 'Blackstone's Guide to the Defamation Act 2013' (1st Ed, Oxford University Press, UK), pp 32
62. Johnson, DR., & Post, DG., (1997), 'The Rise of Law on the Global Network' in B Kahin and C Nesson (eds), Borders in Cyberspace: Information Policy and the Global Information Infrastructure (3rd Ed, MIT Press, Cambridge MA), pp 6-12
63. Kaczorowska, A., (2005), 'Public International Law', (3rd Ed, Routledge Cavendish Publishers), pp ix
64. Kahin, B., & Nesson, C., (1997), 'Borders in Cyberspace' (The MIT Press, London), pp 165
65. Keeton, W. P., (1984), 'Prosser & Keeton on the law of Torts' (5th Ed, NSW), pp 803
66. Kennedy, B. M., & Bell, D., (2000) 'The Cybercultures Reader', (1st Ed, London, UK)
67. Kohl, U., (2000), 'Jurisdiction and the Internet: Regulatory Competence over online Activity'(2nd Ed, Cambridge Book Online), pp 3, 37
68. Kohl, U., (2007), 'Jurisdiction and the Internet: Regulatory Competence over Online Activity', (Cambridge University Press), pp 112-113
69. Kohl, U., (2010), 'Jurisdiction and the Internet Regulatory Competence over online Activity', (2nd Ed, Cambridge Book Online, Cambridge), pp 11

70. Kohl, U., (2017), 'Conflict of Laws and the Internet' in Roger Brownsword, Eloise Scotford, Karen Yeung (eds.), the Oxford Handbook on the Law and Regulation of Technology (Oxford University Press, UK), pp 269-296
71. Kruger, T., (2010), 'Civil Jurisdiction Rules and their Impact on Third States', (Oxford University Press, UK), Chapter 4
72. Kunz, C.L., & Downs, M.P., (2004), 'The process of legal research', (Aspen Publishers, NY), pp 438
73. Lessig, L., (1999), Code and other Laws of Cyberspace (Basic Books Publication, New-York), pp 108
74. Longworth, E., (2000), 'The possibilities for a legal framework for cyberspace including a New Zealand perspective' in T Fuentes-Camacho (eds.), 'The International Dimensions of Cyberspace Law' (Ashgate Hampshire and UNESCO, Paris), pp 38
75. Lord Collins of Mapesbury (2012), 'The Conflict of Laws' in Dicey, Collins and Morris (eds.), Vol 1 (15th Ed, Sweet & Maxwell), pp 9
76. Lord Collins of Mapesbury, (2012), 'Dicey, Morris & Collins on the Conflict of Laws', (15th Ed, Sweet & Maxwell, London), Rule 34, at para 11.141
77. Lunney, M., & Oliphant, K., (2013), 'Tort Law: Text and Materials', (5th Ed, Oxford University Press, UK), pp 581
78. MacCormick, N., (1994), 'Legal Reasoning and Legal Theory', (Oxford University Press, UK), pp 91
79. Maier, C., (2016), 'Within Borders: Territories of Power, Wealth, and Belonging since 1500' (Harvard Uni Press, US), pp 72-75
80. Mandy, B., & Watkins, D., (2013), 'Research Methods in Law', (Routledge Publisher, London), pp 23, 64
81. Mangan, D., Gillies, L., (2017), 'The Legal Challenges of Social Media' (1st Ed, Elgar Publishing, UK), pp 8
82. Marton, E., (2016), 'Violations of Personality Rights through the Internet: Jurisdictional Issues under European Law' (1st Ed, Nomos, Baden-Baden), Ch. 1
83. McClean, D., & Ruiz, V., (2012), 'The Conflict of Laws', (8th Ed, Sweet & Maxwell, London), pp 2
84. McConville, M., & Chui, W., (2001), 'Research methods for law', (Antony Rowe Ltd, GB), pp 12
85. Mcluhan, M., (1964), 'Understanding Media' (NY, McGraw Hill), pp 9
86. McNair, L., (1964), 'The Law of the Air' (3rd Ed, Stevens & Sons, London), pp 260-281
87. McNamara, L., (2007), 'Reputation and Defamation', (OUP, Oxford University), pp 254

88. Mehren, V., (1994), ‘Adjudicatory Jurisdiction’ in Fentiman, R. (eds.), (Boston University Press), pp 35, 96
89. Mills, A., (2009), ‘The Confluence of Public and Private International Law’, (Cambridge University Press, UK), pp 55
90. Minor, R., (1901), ‘Conflict of Laws’ (1st Ed, Boston), pp 283
91. Morris, J., Freund, O., Mann, M., (1979), ‘Dicey and Morris on the Conflict of Laws’, (9th Ed, Stevens & Sons Ltd, UK)
92. Nesson, C., & Kahin, B., (1998), Borders in Cyberspace (Routledge Publication, Cambridge, MA), pp ix
93. North, P., & Fawcett, J., (1992), ‘Private International Law’, (12th Ed, Butterworths, London), pp 76
94. North, P., Fawcett, J., (1999), ‘Cheshire and North Private International Law’, (13th Ed, OUP, Oxford), pp 32
95. Nuyts, A., (2005), ‘Due Process and Fair Trial: Jurisdiction in the United States and in Europe Compared’ in Ronald A Brand (eds.), Private Law, Private International Law and Judicial Cooperation in the EU-US Relationship, 2 CILE Studies, pp 27
96. Parkes, R., & Mullis, A., (2017), ‘Libel and Slander’, (12th Ed, Sweet & Maxwell, London), para 12.7
97. Pattaro, E., (2005), ‘Legal Reasoning: A Coginitive Approach tp the Law’, (5th Ed, Springer), Ch.1 – Legal Doctrine and Legal Theory, pp 4-6
98. Pattaro, E., (2013), ‘A Treatise of Legal Philosophy and General Jurisprudence’, (Springer Publishers, EU), pp 33-55
99. Pearce, D., Campbell, E., & Harding, D., (1987), ‘Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission’, [Canberra: Australian Government Publishing, Australia], pp ix
100. Phillips, E.M., & Derek, S.P., (2005), How to Get a PhD: A Handbook for Students and Their Supervisors (Maidenhead, Open University Press), pp34
101. Powers, B., & McLuhan, M., (1989), ‘The global village: Transformations in world life and media in the 21st century’ (1st Ed, Oxford University Press, NY), pp xii
102. Price, D., & Duodo, K., (2009), ‘Defamation Law: Procedure & Practice’, (4th Ed, Sweat & Maxwell eBooks), Part 1 - Slander claims and special damages-, pp 25, 72, 99
103. Randall, F., & Morningstar, C., (2003), The Lessons of Lucas film's Habitat, the New Media Reader (ed.), Wardrip-Fruin and Nick Montfort, (The MIT Press, Cambridge) pp 664-667

104. Raut, B., (2004), 'Judicial Jurisdiction in the Transnational Cyberspace', (1st Ed, New Era Law Publication, New Delhi), pp 7 and 11
105. Reed, A., (2000), 'Jurisdiction and choice of law in a borderless electronic environment', in Y Akdeniz, C Walker, and D Wall (eds) The Internet, Law and Society, (1st Ed, Pearson, Essex), pp 79
106. Reed, C., (2000), 'Internet Law: Text and Materials', (Butterworths Publication, London), pp 7-11
107. Reed, C., (2012), Making Laws for Cyberspace (OUP, UK), pp 13-14
108. Robertson & Nicol, (2008), 'Media Law', (5th Ed, Penguin Books, London), pp 93
109. Robins, K., (2000), 'Cyberspace and the world we live in', D. Bell & B.M. Kennedy (Eds.), The cybercultures reader', (1st Ed, Routledge Publishers, London), pp 77-95
110. Rogers, W., & Milmo, P., (2008), 'Cat Libel and Slander', (11th Ed, Sweet & Maxwell, London), pp 1066
111. Rosenoer, J., (1997), 'Cyber-Law: The Law of Internet', (1st Ed, Springer-Verlag, NY), pp 227
112. Salmond & Heuston (1996), 'The Law of Torts', (21st Ed, Sweat & Maxwell), pp 154
113. Salter, M., & Mason, J., (2007), 'Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research', (1st Ed, Pearson)
114. Salter, M., (2007), 'Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research' (Harlow, Longman), pp 183
115. Saunders, M., Lewis, P., & Thornhill, A., (2012), 'Research Methods for Business Students', (Longman & Pearson, London), pp 26
116. Sharma, V., (2000), 'Information Technology – Law & Practice', (3rd Ed, Universal Law Publishing, IND), pp 420
117. Shrestha, M., (2008), 'Importance of legal research method for legal professionals', (Kathmandu School of Law, LLM dissert.), pp 1
118. Slater, M., & Mason, J., (2007), 'Writing Law Dissertations', (Pearson Ltd, England), Ch. 4 - Black Letter Approaches to Doctrinal Research
119. Smith, P. A., (2014), 'Conversations with William Gibson', (1st Ed, University Press of Mississippi, Jstore), pp xi-xxiv
120. Smits, J. M., (2015), 'What is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research'; in Gestel, R., Micklitz, H., & Edward L. R., (eds.), 'Rethinking Legal Scholarship: A Transatlantic Dialogue, (New York, Cambridge University Press 2017)

121. Svantesson, D., (2013), ‘Private International Law and the Internet’, (2nd Ed, Kluwer, OUP), pp 52–62
122. Svantesson, D., (2017), ‘Private International Law and the Internet’, (3rd Ed, Kluwer Law International), pp 7
123. Torremans, P., (2017), ‘Cheshire, North and Fawcett: Private International Law’, (15th Ed, Oxford Uni Press), part 2 – preliminary topics
124. Tsagourias, N., Buchan, R., (2015), ‘Research Handbook on Cyberspace and International Law’, (1st Ed, Edward Elgar Publishing, UK), pp 19
125. Twining, W., (1994), ‘Blackstone’s Tower: The English Law School’, (Stevens & Sons, London), pp 131
126. Van Hoeke, M., (2011), ‘Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?’, (Oxford, Hart publishing, UK), pp 13, 19, 25, 46
127. Wang, F., (2010), ‘Internet Jurisdiction and Choice of Law: Legal Practices in the EU, US and China’, (Cambridge University Press, UK), pp 7
128. Weimann, G., (2006), ‘Terror on the Internet’, (1st Ed, USA Institute of Peace, US)
129. Westlake, A., (1925), ‘Treatise on Private International Law’, (7th Ed, Sweat & Maxwell), pp 3
130. Wimmer, K., (2003), ‘International liability for internet content: Publish locally, defend globally’, in Thierer, A., & Crews, C., (eds), ‘Who Rules the Net? Internet Governance and Jurisdiction’ (1st Ed, Cato Institute, Washington), pp 239–68 at 247
131. Winfield & Jolowicz, (2014), ‘Law of Tort’, (19th Ed, Sweat & Maxwell) Ch. 12, pp 390-461
132. Zittrain, J., (2008), ‘The future of the internet--and how to stop it’ (1st Ed, Yale University Press, Edelman publisher), Ch. 2, pp 19
133. Zweigert, K. & Kotz, H., (1998), ‘An Introduction to Comparative Law’, in Tony Weir (eds.), (3rd Ed, Oxford University Press), pp15–18, 58–62

B.2.: Journal Articles

A

1. Adams, J., (1996), 'Controlling cyberspace: Applying the computer fraud and abuse act to the internet', Santa Clara Computer and High Tech Law Journal, Vol 12, pp 403-434
2. Adamson, F. B., (2016), 'Spaces of Global Security: Beyond Methodological Nationalism', Journal of Global Security Studies, Vol 1, Issue 1, pp 19-35
3. Adler, M., & Simon, J., (2014), 'Stepwise Progression: The Past, Present, and Possible Future of Empirical Research on Law in the US and the UK', Journal of Law and Society, Vol 41, Issue 2, pp 173–202
4. Afia, J., (2011), 'Tipping the Balance', New Law Journals, Vol 376, Issue 7457
5. Ahmed, M., & Beaumont, P., (2017), 'Exclusive choice of court agreements: Some issues on the Hague convention on choice of court agreements and its relationship with the Brussels I recast especially anti-suit injunctions, concurrent proceedings and the implications of BREXIT, Journal of Private International Law, Vol 13, Issue 2, pp 386
6. Ahmed, M., & Pennells, C., (2017), 'Online courts take the stage: Pre-action protocols & the Briggs online court', New Law Journal, Vol 167, Issue 18, pp 7746
7. Akdeniz, Y., Taylor, N., & Walker, C., (2001), 'Bigbrother.gov.uk: State surveillance in the age of information and rights', Criminal Law Review, pp 73
8. Aldrich, R., (2000), 'Cyberterrorism and computer crime: Issues surrounding the establishment of an international legal regime', INSS Occasional Paper 32 USAF Institute for National Security Studies, USAF Academy, Colorado
9. Aleksander, P., (2000), 'An Unsolved Philosophical Problem', Ethical Theory and Moral Practice, Vol 3, Issue 3, pp 273-302
10. Ali G. R., (2016), 'A proposed solution to the problem of libel tourism, Journal of Private International Law, Vol 12, Issue 1, pp 106-131
11. Allarousse, V., (1991), 'A Comparative Approach to the Conflict of Characterization in Private International Law', Case W. Res. Journal of International Law, Vol 23, pp 479
12. Allcott, H., & Gentzkow, M., (2017), 'Social media and fake news in the 2016 election', Journal of Economic Perspectives, Vol 31, Issue 2, pp 211-236.

13. Ambrose, M. L., (2014),' Speaking of forgetting: Analysis of possible non-EU responses to the right to be forgotten and speech exception', Telecommunications Policy, Vol 38, issue 9, pp 800-811

14. Amedie, J., (2015), 'The Impact of Social Media on Society', Advanced Writing: Pop Culture Intersections, Vol 2, pp 24

15. American Bar Association (2000), 'Jurisdiction in Cyberspace Project: Achieving Legal & Business Order in Cyberspace', A Report on Global Jurisdiction Issues Created by the Internet, A.B.A. SEC. Bus. L. 5

16. Andreas, M., & Michael, H., (2010), 'Users of the world, unite!: The challenges and opportunities of social media', Business Horizons, Vol 53, Issue 1, pp 61

17. Angelotti, E., (2013), 'Twibel Law: What Defamation and its Remedies Look Like in the Age of Twitter', High Technology Law Journal, Vol 13, pp 433

18. Antoniou, A., & Akrivos, D., (2017), 'Indecent images and defamatory meaning in late modern societies: Taking ordinary, reasonable readers outside their ivory tower', JM Law, Vol 9, Issue 2, pp 155-172

19. Arden, D. M., (2017), 'Privacy and third parties to criminal proceedings', The Cambridge Law Journal, Vol 76, Issue 3, pp 469-472

20. Ardia, D. S., (2013), 'Freedom of speech, defamation, and injunctions', William and Mary Law Review, Vol 55, Issue 1, pp 42

21. Arkowitz, J., Pearson, L., Benjamin, B., (2013), 'A Brand Owner's Guide to Social Media', Kilpatrick Townsend & Stockton LLP, Available online

22. Arnell, P., (2000). The proper law of the crime in international law revisited. Nottingham Law Journal, Vol 9, Issue 1, pp 39

23. Arnell, P., (2007), 'The long arm of United States law', Scots Law Times, Vol 37, pp 267

24. Arzandeh, A., (2017), 'The English Court's Service-Out Jurisdiction In International Tortious Disputes', Law Quarterly Review, Vol 133, pp 144-160

25. Ash, A., (2017), 'How the rise of liberal, social media-savvy generation is challenging Chinese Society', online

26. Auda, A.G.R., (2016), 'A proposed solution to the problem of libel tourism, Journal of Private International Law, Vol 12, Issue 1, pp 106-131

27. Avellan, J., (1998), 'The Cross-jurisdictional Validity of Electronic Signature and Certificates in recent Legislative Text', American Bar Association, Vol 38

28. Awan, I., & Zempi, I., (2017), 'I Will Blow Your Face OFF'—VIRTUAL and Physical World Anti-muslim Hate Crime', The British Journal of Criminology, Vol 57, Issue 2, pp 362-380

B

29. Balkin, J. M., (2018), 'Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation', Yale Law School, Public Law Research Paper No. 615

30. Banu, R., (2017), 'A relational feminist approach to conflict of laws', Michigan Journal of Gender & Law, Vol 24, Issue 1, pp 1-15

31. Barendt, E., (2013), 'Freedom of Speech and Internet: The Problem of Global Communication', Chatham House International Law Discussion

32. Barendt, E., (2017), 'Defamation Law', Journal of Media Law, Vol 9, Issue 2, pp 291-295

33. Batza, C., (2017), 'Trending now: The role of defamation law in remedying harm from social media backlash', Pepperdine Law Review, Vol 44, Issue 2, pp 429-476

34. Bayitch, S. A., (1954), 'Conflict Law in United States Treaties', Miami LQ, Vol 9, Issue 9

35. Beheshti, N., Burmeister, E., (2010), 'Optical packet buffers for backbone internet routers', IEEE/ACM Transactions on Networking (TON), Vol 18, Issue 5, pp 1599-1609

36. Bellovin, S. M., (2017), 'Jurisdiction and the internet', IEEE Security & Privacy, Vol 15, Issue3, pp 96

37. Berman, P. S., (2002), 'The Globalization of Jurisdiction', University of Pennsylvania Law Review, Vol 151, pp 311

38. Bernhard, M., (2010), 'How has the Law Attempted to Tackle the Borderless Nature of the Internet?', International Journal of Law and IT, Vol 18, Issue 2, pp 142-175

39. Bernhard, U., Dohle, M., & Kelm, O., (2017), 'Social Media Activities of Political Communication Practitioners: The Impact of Strategic Orientation and In-Group Orientation', International Journal of Strategic Communication, Vol 11, Issue 4, pp 306-323

40. Bigos, O., (2005), 'Jurisdiction over Cross-Border Wrongs on the Internet', ICLQ, Vol 54, pp 585-602

41. Bizer, A., & Hein, J., (2018), 'Social Media and the Protection of Privacy: Current Gaps and Future Directions in European Private International Law', International Journal of Data Science and Analytics, pp 1-7

42. Blom, J., (1981), 'Choice of Law Methods in the Private International Law of Contract', Canadian Yearbook of International Law, Vol 18, pp 161-200

43. Bogdan, M., (2012), 'Private international law as component of the law of the forum: General course', The Hague: Hague Academy of International Law, pp 49-70

44. Bogdin, M., (2012), 'Private International Law as Component of the Law of the Forum', The Pocket Books of The Hague Academy of International Law, Vol 13, pp 348

45. Bonomi, A., (1999), 'Mandatory rules in private international law: the quest for uniformity of decisions in a global environment', Yearb Private Int Law, Vol 1, Issue 1, pp 215-247

46. Bookman, P.K., (2015), 'Litigation isolationism, Stanford Law Review, Vol 67, Issue 1, pp 1081 - 1144

47. Boulianne, S., (2015), 'Social media use and participation: A meta-analysis of current research', Information, Communication & Society (ASA), Vol 18, Issue 5, pp 524-538

48. Boyle, J., (1977), 'Foucault in Cyberspace: Surveillance, sovereignty, and hard-wired censors', University of Cincinnati Law Review, Vol 66, pp 177

49. Braun, O., (2002), 'Internet Publications and Defamation: Why the Single Publication Rule Should Not Apply', Golden Gate UL Rev, Vol 32, pp 325

50. Brid, J., (2011), 'The Modernization of English Libel Laws and Online Publication', Journal of Internet Law, Vol 14, Issue 7, pp 3

51. Briggs, A., (2012), 'The subtle variety of jurisdiction agreements', Lloyd's Maritime & Commercial Law Quarterly, pp 364

52. Briggs, A., (2013), 'The Conflict of Laws', (3rd Ed, Oxford University Press, UK)

53. Briscar, J. R., (2017), 'Data transmission and energy efficient internet data centres', American University Law Review, Vol 67, Issue 1, pp 233-267

54. Broeders, D., (2017), 'Aligning the international protection of 'the public core of the internet' with state sovereignty and national security', Journal of Cyber Policy, Vol 2, Issue 3, pp 366-376

55. Brookson-Morris, K. (2007), 'Conflicts of criminal jurisdiction', International and Comparative Law Quarterly, 56, 659

56. Brown, R., (1999), 'The Law of Defamation' [2nd Ed, Palgrave, Canada], pp 7-59, 7-60 and 7-113

57. Brown, R., (2013), 'Brown on Defamation', (2nd Ed, Carswell, Canada), Ch. 1

58. Browning, J. G., & Seale, G., (2017), 'More than words - the evidentiary value of emoji', Computer and Internet Lawyer, Vol 34, Issue 1, pp 14-20

59. Bucaj, E., (2017), 'The Need for Regulation of Cyber Terrorism Phenomena in Line With Principles of International Criminal Law', Acta University Danubius, Vol 13, Issue 1, pp 140-161

60. Burk, D. L., (1997), 'Jurisdiction in a World without Borders', Va JL & Tech, Vol 1, issue 1

61. Burkell, J., & Kerr, I., (2000), 'Electronic Miscommunication and the Defamatory Sense', Canadian Journal of Law and Society, Vol 15, Issue 1

62. Burshtein, S., (2017), 'The true story of fake news', Intellectual Property Journal, Vol 29, Issue 3, pp 397

63. Byassee, W., (1997), 'Jurisdiction in Cyberspace: Applying real world precedent to the virtual community, Wake Forest LR, Vol 5, Issue 2

C

64. Callamard, A., (2017), 'Are courts re-inventing Internet regulation?', International Review of Law, Computers & Technology, Vol 31, Issue 3, pp 323-339

65. Cameron, B., (2000), 'Jurisdiction and the Internet', Computer & Law, Regulating e-Business conference, THC Press, pp 28-29

66. Carballo, L., & Kramer, X., (2014), 'The Role of Private International Law in Contemporary Society: Global Governance as a Challenge', Erasmus Law Review, Issue 3, pp 109-112

67. Card, R., (2002), 'The Legal Scholar', The Reporter: Newsletter of the Society of Legal Scholars, Vol 25, pp 5-12

68. Carevic, M., & Cica, Z., (2009), 'FPGA implementation of IP packet segmentation and reassembly in internet router', Serbian Journal of Electrical Engineering, Vol 6, Issue 3, pp 399-407

69. Carolienea, V., (2017), 'Research Methods: Doctrinal Methodology', ASC LLM Support, UWE

70. Carter, J., (1981), 'Torts in English Private International Law', Vol 52, Issue 9, B.Y.B.I.L., pp 24

71. Carter, P., (1993), 'The Role of Public Policy in English Private International Law', The International and Comparative Law Quarterly, Vol 42, Issue 1, pp 1-10

72. Carter, P.B., (1996), 'The Private International Law (Miscellaneous Provisions) Act 1995' Quarterly Law Review, Vol 112, pp 194

73. Cassel, D., (2001), 'A framework of norms', Harvard International Review, Vol 22, Issue 4, pp 60

74. Chaffey, D., (2018), 'Global social media research summary 2018', Smart Insight online

75. Chapelle, B., & Fehlinger, P., (2016), 'Jurisdiction on the Internet: From Legal Arms Race to Transnational Cooperation', Global Communication on Internet Governance, Chatham House, Paper series no 28

76. Chapelle, B., (2014), 'Multi-stakeholder Governance - Principles and Challenges of an Innovative Political Paradigm', Wolfgang Kleinwachter Editorial, The Collaborator Steering Group, Edition 1, Series 1

77. Charles, W.M., (2018), 'Difficulties in Establishing Liability in Online Defamation: Tanzania Experience', International Journal of Law and Public Administration, Vol 1, Issue 1, pp 48-57

78. Cheer, U., (2005), 'Myths and Realities About the Chilling Effect: The New Zealand Media's Experience of Defamation Law', Torts Law Journal, Vol 13, pp 259

79. Chen, C., (2002), ' The United States and European Union Approaches to Internet Jurisdiction and Their Impact on E-Commerce', University of Pennsylvania Journal of International Economic Law, Vol 25, Issues 1, pp 423-455

80. Chen, W., & Goldstein, G., (2017), 'The Asian principles of private international law: Objectives, contents, structure and selected topics on choice of law', Journal of Private International Law, Vol 13, Issue 2, pp 411

81. Cheruvalath, R., (2018), 'Internet neutrality: A battle between law and ethics', International Journal for the Semiotics of Law, Vol 31, Issue 1, pp 145-153

82. Chesterman, S., (2015), 'Law plays catch-up with technology' Online journal

83. Chircop, L., (2018),' A due diligence standard of attribution in cyberspace,' The International and Comparative Law Quarterly, Vol 67, Issue 3, pp 643-668

84. Chris, R., (2010), 'Information 'Ownership' in the Cloud', Queen Mary School of Law Legal Studies Research Paper No. 45/2010

85. Christie, G.C., (1977), 'Defamatory Opinions and the Restatement of Torts', Michigan Law Review, Vol 75, Issue 8, pp 1621-1643

86. Cippettini, V., (2009), 'Modern Difficulties in Resolving Old Problems: Does The Actual Malice Standard Apply to Celebrity Gossip Blogs', Seton Hall J. Sports & Ent. L., Vol 19, pp 221

87. Clarke, K., (2012), 'Parliamentary Debates, House of Commons', Vol 546, col 177

88. Clarke, K., (2012), 'Parliamentary Debates, House of Commons', Vol 546, col 177

89. Cohen, J. D., (2016), 'The next generation of government CVE strategies at home: Expanding opportunities for intervention, the American Academy of Political and Social Science, Vol 668, Issue 1, pp 118-128

90. Collins, (1972), 'Some Aspects of Service out of the Jurisdiction in English Law' 7 LA, ICLQ, Vol 21, Issue 4, pp 656-681

91. Collins, M., (2001), 'The law of defamation and the Internet', (Oxford University, OUP), pp 21

92. Collins, M., (2003), 'Defamation on the Internet After Dow Jones & Company Inc v Gutnick', Media & Arts Law Review, Vol 8, Issue 3, pp 181

93. Collins, M., (2005), 'The Law of Defamation and the Internet', (2nd Ed, Oxford University, OUP), pp 334

94. Collins, M., (2014), 'Collins on defamation', (1st Ed, Oxford university press), pp 5

95. Collins, M., (2014), 'The Law of Defamation and the Internet' (1st Ed, Oxford Uni Press, UK), paras 25.51 to 25.89

96. Conay, J., (2017), 'Risks of unlawful social media content: Changes in UK defamation landscape and what you need to know', Social Media Law, Bulletin, online in defamation & privacy

97. Connolly, U., (2012), 'Multiple Publication and Online Defamation-Recent Reforms in Ireland and the United Kingdom', Masaryk UJL & Tech, Vol 6, Issue 1, pp 35-51

98. Constine, J., (2018), 'Facebook boosts daily users to 1.45 B ' Online stats

99. Cook, W. W., (1931), 'The Jurisdiction of Sovereign States and the Conflict of Laws', Colum. L. Rev., Vol 31, pp 368

D

100. Damayanti, M., & Yuwono, E., (2013), 'Avatar, identitas dalam cyberspace', Nirmana, Vol 15, issue 1, pp 13-18

101. Darrel, C. M., (1998), 'Jurisdiction in Cyberspace: A Theory of International Spaces', Michigan Telecommunications and Technology Law Review, Vol 4, Issue 1, pp 69-105

102. Daskal, J., (2015), 'The Un-territoriality of Data', Yale Law Journal, Vol 125, pp 365-78

103. Daskal, J., (2018), 'Borders and bits', Vanderbilt Law Review, Vol 71, Issue 1, pp 179-240

104. David, A., (1991), 'Is Libel Law Worth Reforming', University of Pennsylvania Law Review, Vol 140, Issue 487, pp 488-550

105. David, K. O., & Wueller, J. R., (2017), 'Fake News: A Legal Perspective, Journal of Internet Law, Vol 20, Issue 10, pp 6-13

106. David, L., & Zach, S., (2011), 'Public Figure-hood in the Digital Age', Journal on Telecomm & High Tech., Vol 9, Issue 2, pp 403

107. Davidson, A., (2012), 'The Law of Electronic Commerce', (2nd Ed, Cambridge University Press, UK), pp 11, 23

108. Davidson, S., (2008), 'International considerations in libel jurisdiction, In Forum on Public Policy', A Journal of the Oxford Round Table, pp 1-28

109. Dean, W. T., (1950), 'The Conflict of Conflict of Laws', Stan. L. Rev, Vol 3, Issue 388

110. Descheemaeker, E., (2009), 'Protecting Reputation: Defamation and Negligence', Oxford Journal of Legal Studies, Vol 29, pp 608–10

111. Descheemaeker, E., (2010), 'The Division of Wrongs: A Historical Comparative Study', (2nd Ed, Oxford Uni Press), Part III – Modern English Law, pp 208

112. Descheemaeker, E., (2015), 'Three Errors in the Defamation Act 2013', Journal of European Tort Law, Vol 6, Issue 1

113. Dickinson, A., (2016), 'Back to the future: The UK's EU exit and the conflict of laws', Journal of Private International Law, Vol 12, Issue 2, pp 195

114. Dixon, H., (2013), 'IPad wizardry for beginners', Judges' Journal, Vol 52, Issue 2, pp 36-39

115. Dixon, M., (2015), 'A Doctrinal Approach to Property Law Scholarship: Who Cares and Why?', Kings and Bishops in Medieval England, 1066-1216

116. Djavaherian, K., (1998), 'Reno v ACLU', Berkeley Technology Law Journal, Vol 13, pp 371-388

117. Dodge, W. S., (1998), 'Extraterritoriality and Conflict-of-Laws Theory: An Argument for Judicial Unilateralism' Harvard International Law Journal, Vol 39, Issue 101, pp 136

118. Dodge, W. S., (2008), 'The Public-private Distinction in the Conflict of Laws', Duke Journal of Comparative & International Law, Vol 18, pp 371 - 394

119. Donnelly, B., & Pratt, J., (2011), 'A Clash of Jurisdiction', Macfarlanes LLP, In House Lawer, online

120. Dorsett, S., & McVeigh, S., (2007), 'Jurisprudence of Jurisdiction' (1st Ed, Oxon: Routledge - Cavendish, New York), pp 3

121. Dou, E., (2016), 'Microsoft, Intel, IBM Push Back on China Cybersecurity Rules', The Wall Street Journal, online

122. Drissel, D., (2006), 'Internet Governance in a Multipolar World: Challenging American Hegemony', Cambridge Review of International Affairs, Vol 19, Issue 1, pp 105 -121

123. Du-Bois, I., (1988), 'The Significance in Conflict of Laws of the Distinction Between Interstate and International Transactions', Minn. LR, Vol 17, pp 361

E

124. Eckert, A., (2001), 'The Non-Intervention Principle and International Humanitarian Interventions', International Legal Theory, Vol 7, Issue 1, pp 49

125. Edeshaw, A., (2003), 'Web services and the law: A sketch of the potential issues', International Journal of Law & Information Technology, Vol 11, pp 251- 272

126. Edwards, H., (1992), 'The Growing Disjunction between Legal Education and the Legal Profession', Michigan Law Review, Vol 91, pp 34

127. Ehrenzweig, A., (1956), 'The Transient Rule of Personal Jurisdiction: The "Power" Myth and Forum Conveniens', The Yale Law Journal Company, Vol 65, Issue 3, pp 289-314

128. Elizabeth, S., (2013), 'Internet Defamation Law', Legal Education Society of British Columbia CLEBC, Paper 9.1

129. Elkin, J., (2000), 'Cyber-smears: Dealing with Defamation on the Net, BUS. L. TODAY, Vol 9, pp 22

130. Emerson, H. T., & Frank B. C., (2006), 'What is legal doctrine?', Northwestern University Law Review, Vol 100, pp 517

131. England, C., (2017), 'Katie Hopkins ordered to pay out £131,000 after losing Jack Monroe libel case appeal' online

132. Erdos, D., (2014), 'Data protection and the right to reputation: Filling the "gaps" after the defamation act 2013', The Cambridge Law Journal, Vol 73, Issue 3, pp 536

133. Erevik, E. K., Pallesen, S., Andreassen, C. S., & Torsheim, T., (2018), 'Who is watching user-generated alcohol posts on social media?', Addictive behaviours, Vol 78, pp 131-137

F

134. Fangfei, W. F., (2009), 'Obstacles and Solutions to Internet Jurisdiction: A Comparative Analysis of the EU and US laws', Journal Of International Commercial Law And Technology, Vol 3, Issues 4, pp 233-241

135. Faria, J. A. E., (2009), 'Future Directions of Legal Harmonisation & Law Reform: Stormy Seas or Prosperous Voyage?', Uniform Law Review, Vol 14, Issue 1, pp 5-34

136. Fawcett, J., (1984), 'Lis Alibi Pendens and the Discretion to Stay', The Modern Law Review, Vol 47, issue 4, pp 481-486

137. Fawcett, J., (1991), 'The Interrelationships of Jurisdiction and Choice of Law in Private International Law', Current Legal Problems, pp 39

138. Feng, X., (2011), 'Impacts of the Internet on Traditional Jurisdictional Principles in International Civil & Commercial Cases', Front. Law China, Vol 6, Issue 3, pp 387–402

139. Fentiman, J., (1992), 'Foreign Law in English Courts', Quarterly Law Review, Vol 108, pp 142

140. Fentiman, R., (2006), 'Civil Jurisdiction and Third States: Owusu and After', CML Review, Vol 43, pp 705-732

141. Fitzgerald, B., (2003), 'Dow Jones & Co Inc v Gutnick: Negotiating 'American legal hegemony' in the transnational world of cyberspace', Melbourne University Law Review, Vol 27, Issue 2, pp 590-611

142. Fox, M., & Bell, C., (1999), 'Learning Legal Skills', (1st Ed, Blackstone Publication, London), pp 9

143. Francis, D., & Roberts, A., (2006), 'The Emerging Recognition of Universal Civil Jurisdiction', Am. J. Int'l L., Vol 100, pp 142

144. Frederick, A., (2015), 'Online defamation of California defendant did not support California personal jurisdiction', Computer and Internet Lawyer, Vol 32, Issue 4, pp 18

145. Frederiksen, K., & Thomas, A. J., (2003), 'Celebrities testing limits of right of publicity laws', Computer and Internet Lawyer, Vol 20, Issue 2, pp 11

146. Freeman, E. H., (1999), 'Internet Jurisdiction: Issues of Jurisdiction in Cyberspace', Information Systems Security, Vol 7, Issue 4, pp 20-24

147. Frischmann, B. M., (2003), 'The prospect of reconciling internet and cyberspace', Loyola University of Chicago Law Journal, Vol 35, Issue 1, pp 205

G

148. Galbally, P. J., (2015), 'A 'serious' response to trivial defamation claims: An examination of s 1(1) of the Defamation Act 2013 (UK) from an Australian perspective, Media and Arts Law Review, Vol 20, pp 213-250

149. Gallardo, K. L., (2017), 'Taming the internet pitchfork mob: Online public shaming, the viral media age, and the communications decency act', Vanderbilt Journal of Entertainment and Technology Law, Vol 19, Issue 3, pp 721

150. Gawas, V. M., (2017), 'Doctrinal legal research method a guiding principle in reforming the law and legal system towards the research development', International Journal of Law, Vol 3, Issue 5, pp 128-130

151. Gehl, R., (2014), 'Power/Freedom on the Dark Web: A Digital Ethnography of the Dark Web Social Network', New Media & Society, Vol 1, Issue 17

152. Geist, M., (2001), 'Is There a There There?: Toward Greater Certainty for Internet Jurisdiction', Berkeley Tec. L.J., Vol 16, pp 1345, at 1380

153. George, B., (1990), 'In Search of General Jurisdiction', Tulane Law Review, Vol 64, pp 1097

154. Gerald J. P., (1995), 'Public Practical Reason: An Archaeology', Social Philosophy and Policy, Vol 12, Issue 1, pp 43-86

155. Gerrie, W., (2018), 'Say What You Want: How Unfettered Freedom of Speech on the Internet Creates No Recourse for Those Victimized', Catholic University Journal of Law and Technology, Vol 26, Issue 1, pp 64

156. Gestel, R.V., & Wolfgang, M.H., (2014), 'Why Methods Matter in European Legal Scholarship', European Law Journal, Vol 20, pp 292

157. Ghappour, A., (2017), 'Searching places unknown: Law enforcement jurisdiction on the dark web', Stanford Law Review, Vol 69, Issue 4, pp 1075

158. Gillaspie, A., (2017), 'Extraterritorial application of the stored communications act: Why Microsoft Corp. v. United States signals that technology has surpassed the law', University of Kansas Law Review, Vol 66, Issue 2, pp 459

159. Gillen, J., (2012), 'Everything should be as simple as possible but not simpler: Practice and procedure in defamation proceedings', Northern Ireland Legal Quarterly, Vol 63, Issue 1, pp 137

160. Ginsburg, J. C., & Sirinelli, P., (2015), 'Private International Law Aspects of Authors' Contracts: The Dutch and French Examples', Colum. Journal of Law & Arts, Vol 39, pp 171

161. Gladstone, J., (2003), 'Determining Jurisdiction in Cyberspace: The "Zippo" Test or the "Effects" test?', Informing Science, pp 143-156

162. Golberg, D., (2013), 'To Dream the Impossible Dream? Towards a Simple, Cheap (and Expression-Friendly) British Libel Law', Journal of International Media & Entertainment Law, Vol 4, Issue 1, pp 32-55

163. Goldberg, D., (2011), 'To Dream the Impossible Dream-Towards a Simple, Cheap, (and Expression-Friendly) British Libel Law', Journal of International Media & Entertainment Law, Vol 4, Issue 1, pp 31-56

164. Goldman, E., (2018), 'Emoji's and the Law', Santa Clara University, Legal Studies Research Paper, Vol 8, issue 17, pp 58

165. Goldsmith, J. L., (1998), 'Against Cyber-anarchy', The University of Chicago Law Review, Vol 65, Issue 4, pp 1199-1250

166. Goldsmith, J., (2000), 'Unilateral Regulation of the Internet: A Modest Defence', EJIL, Vol 11, pp 147

167. Goldsmith, J., L., (1998), 'The Internet and the Abiding Significance of Territorial Sovereignty, Ind. J. Global Legal Study, Vol 5, pp 475

168. Goodrich, A., (1938), 'Foreign Facts and Local Fancies', Law Review, Vol 26

169. Gould, K., (2017), 'Locating a "threshold of seriousness" in the Australian tests of defamation', Sydney Law Review, Vol 39, Issue 3, pp 333

170. Graham, M., (2013), Geography/Internet: Ethereal Alternate Dimensions of Cyberspace or Grounded Augmented Realities, The Geographical Journal, Vol 179, No 2, pp 177-188

171. Graveson, R. R., (1951), 'Choice of Law and Choice of Jurisdiction in the English Conflict of Laws', British Year Book of International Law, Vol 28, pp 273-290

172. Gray, T., (2005), 'Minimum Contacts in Cyberspace: The Classic Jurisdiction Analysis in a New Setting', Journal of High Technology Law, Vol 1, pp 85-86

173. Gray, T., (2015), 'Minimum Contacts in Cyberspace: The Classic Jurisdiction Analysis in a New Setting', Journal of High Technology Law, Vol 1, pp 85-86

174. Greenberg, M., (2017), 'What makes a method of legal interpretation correct?: legal standards vs fundamental determinants', Harvard Law Review, Vol 130, Issue 4, pp 105-105

175. Grimmelmann, J., (2010), 'The Unmasking Option', Denver University Law Review, Vol 887, Issue 23, pp 56

176. Groppo, M., (2016), 'Serious harm: A case law retrospective and early assessment', Journal of Media Law, Vol 8, Issue 1

177. Guillermo, W., (2015), 'Rules for Offline and Online in Determining Internet Jurisdiction: Global Overview & Colombian cases, International Law Journal, Vol 26, pp 13-62

178. Gummerus, J., Liljander, V., & Sihlman, R., (2017), 'Do ethical social media communities pay off?: An exploratory study of the ability of Facebook ethical communities to strengthen consumers' ethical consumption behaviour', Journal of Business Ethics, Vol 144, Issue 3, pp 449-465

179. Guzman, A. T., (2001), 'Choice of law: New foundations,' Geo. Law Journal, Vol 90, pp 883

H

180. Hall, E., & Malanga, S., (2017), 'Defamation lawsuits: Academic sword or shield?', EMBO Molecular Medicine, Vol 9, Issue 12, pp 1623-1625

181. Hall, M., (2017), 'Swiss court convicts man for 'liking' defamatory Facebook post in landmark ruling', online

182. Halliday, J., (2013), 'Sally Bercow denies 'trivialising' public apology to Lord McAlpine', online

183. Hancock, J., (1998), 'In Borderless Cyberspace: The Cross Jurisdictional Validity of Electronic Signature and Certificates in Recent Legislative Texts', Jurimetrics, Vol 38, Issue 3, pp 301-315

184. Hanssen, S., & Stakemann, H., (2001), 'Cyberspace Jurisdiction in the U.S. (From an Alien's Point of View) - The International Dimension of Due Process', Norwegian Research Centre for Computers and Law, Vol 5, Issue 1, pp 457

185. Hansson, S., (2013), 'Defamation in 140 characters or Fewer – The case of McAlpine v Bercow ', CTLR, Vol 19, Issue 6, pp 172

186. Haque, O. S., (2015), 'Why are young Westerners drawn to terrorist organisations like ISIS?', Modern Medicine Network, Vol 32, Issue 9

187. Hardeveld, G. J., Webber, C., & O'Hara, K., (2017), 'Deviating from the cybercriminal script: Exploring tools of anonymity (mis)used by carders on cryptomarkets', American Behavioral Scientist, Vol 61, Issue 11, pp 1244-1266

188. Hartley, T. C., (2010), 'Libel Tourism' and Conflict of Laws, International and Comparative Law Quarterly, Vol. 59, Issue 1, pp 25-38

189. Hartley, T., C., (1984), 'Civil Jurisdiction and Judgments', (Sweet & Maxwell, London), pp 23

190. Haubrich, D., (2006), 'Modern politics in an age of global terrorism: New challenges for domestic public policy', Political Studies, Vol 54, pp 399-423

191. He, X., & Lin, F., (2017), 'The losing media? An empirical study of defamation litigation in China', China Quarterly, Vol 230, Issue 230, pp 371-398

192. Hildebrandt, M., (2013), 'Extraterritorial jurisdiction to enforce in cyberspace?, Bodin, Schmitt, Grotius in cyberspace', University of Toronto Law Journal, Vol 63, Issue 2, pp 196-224

193. Hill, J., (2004), 'Choice of Law in Contract under the Rome Convention: The Approach of the UK Courts', International and Comparative Law Quarterly, Vol 53, pp 325-350

194. Hill, R., (2014), The Internet, its governance, and the multi-stakeholder model, Info, Vol 16, issue 1

195. Holger, P., (2015), 'The Emergence of i-War: Changing Practices and Perception of Military Engagement in Digital Era', New Media and Society, Vol 17, Issue 1

196. Holland, H. B., (2005), 'The Failure of the Rule of Law in Cyberspace? : Reorienting the Normative Debate on Borders and Territorial Sovereignty', J. Marshall J. Computer & Info. L., Vol 24, Issue 1

197. Hook, M., (2017), 'The "statutist trap" and subject-matter jurisdiction', Journal of Private International Law, Vol 13, Issue 2, pp 435

198. Hooper, D., (2016), 'How the court will interpret whether England is the most appropriate place to bring a libel action, Entertainment Law Review, Vol 27, Issue 3, pp 102

199. Hooper, D., Waite, K., & Murphy, O., (2013), 'Defamation Act 2013 – what difference will it really make?' Entertainment Law Review, Vol 24, Issue 6, pp 199-206

200. Houtte, V., (2011), 'What's New in European Arbitration?', Dispute resolution journal, Vol 66, Issue 1, pp 16

201. Hua, W., (2017), 'Cybermobs, civil conspiracy, and tort liability', Fordham Urban Law Journal, Vol 44, Issue 4, pp 1217

202. Hunt, P. H., (2013), 'Tortious Tweets: A Practical Guide to Applying Traditional Defamation Law to Twibel Claims', Louisiana Law Review, Vol 73, Issue 2, pp 8

203. Hunter, D., (2003), 'Cyberspace as Place and the Tragedy of the Digital Anti-commons', California Law Review 91, pp 439-516

204. Hutchinson, T., & Duncan, N., (2012), 'Defining and Describing What We Do: Doctrinal Legal Research', Deakin Law Review, Vol 17, pp 83-99

205. Hutchinson, T., (2010), 'Researching and Writing in Law', (3rd Ed, Thomson Reuters, London), pp 41

I

206. Irion, K., (2015), 'Your digital home is no longer your castle: how cloud computing transforms the (legal) relationship between individuals and their personal records', International Journal of Law and Information Technology, Vol 23, Issue 4, pp 348–371

J

207. Jablonska, M. R., (2017), 'Modern consumer in cyberspace – internet and psychology approach', Foundations of Management, Vol 9, Issue 1, pp 111

208. Jackson, A., (2009), 'Cyberspace…The Final Frontier: How the Communications Decency Act Allows Entrepreneurs to Boldly Go Where No Blog Has Gone Before', Oklahoma Journal of Law and Technology, Vol 5, Issue 1, Article 4

209. Jayswal, N., (2014), 'Attack Monitoring and Detection System using Dark IPs', International Journal of Engineering Research & Technology, Vol 3, Issue 1

210. Jimenez, W., & Lodder, A., (2015), 'Analyzing Approaches to Internet Jurisdiction Based on a Model of Harbors and the High Seas', IRLCT, Vol 29, pp 266-268

211. Jitta, D. J., (1919), 'Development of Private International Law through Conventions', Yale LJ, Vol 29, pp 497

212. Johnson, David R., & Post, David G., (1996), 'Law and Borders - The Rise of Law in Cyberspace', Stanford Law Review, Vol 48, pp 1367

213. Johnston, A., Deakin, S., & Markesinis, B., (2003), 'Markesinis and Deakin's Tort Law', (7th Ed, Oxford university press), pp 652-655

214. Jonathan, H., (2008), 'The Brussels I Regulation and the Re-Emergence of the English Common Law', The European Legal Forum, Vol 4, pp 181 - 189

215. Jones, A., & Lidsky, L.B., (2016), 'Of Reasonable Readers and Unreasonable Speakers: Libel Law in a Networked World', Virginia Journal of Social Policy and the Law, Vol 16, Issue 2, pp 29

216. Joyce, D., (2015), 'Internet freedom and human rights', European Journal of International Law, Vol 26, Issue 2, pp 493-514

217. Joyce, D., (2017), 'Data associations and the protection of reputation online in Australia', Big Data & Society, Vol 4, Issue 1, pp 10

218. Junho H. C., James A. D., (2002), 'Making a Global Community on the Net – Global Village or Global Metropolis?: A Network Analysis of Usenet Newsgroups', Journal of Computer-Mediated Communication, Vol 7, Issue 3

219. Jurczak, F. A., & Kowalski, M., (2010), 'Create their own space in cyberspace', Journal of Technology & Information, Vol 2, Issue 3, pp 12-16

K

220. Kaplan, A. M., & Haenlein, M., (2010), 'Users of the world, unite! The challenges and opportunities of social media' Business Horizons, Vol 50, Issue 1, pp 61

221. Karapapa, S., & Borghi, M., (2015), 'Search engine liability for autocomplete suggestions: Personality, privacy and the power of the algorithm', International Journal of Law and Information Technology, Vol 23, pp 261-289

222. Karen, E., (2018), 'Is 'Truthtelling' Online Reasonable? Restoring Context to Cyber Defamation Analysis', McGill Law Journal, Vol 63, Issue 3

223. Karniel, Y., (2008), 'Defamation on the Internet: A New Approach to Libel in Cyberspace' Journal of International Media & Entertainment, Vol 2, pp 215, 216 -219

224. Kennedy, D., (1982), 'The Stages of the Decline of the Public/Private Distinction', University of Pennsylvania Law Review, Vol 130, pp 1349

225. Kennedy, D., (1996), 'International law and the nineteenth century: History of an illusion', Nordic Journal of International Law, Vol 65, Issue 3, pp 385-420

226. Kenyon, A. T., (2014), 'Protecting speech in defamation law: Beyond Reynolds-style defences, Journal of Media Law, Vol 6, Issue 1, pp 21-46

227. Kerr, J., (2016), 'What is a search engine?: The simple question the court of justice of the European union forgot to ask and what it means for the future of the right to be forgotten', Chicago Journal of International Law, Vol 17, Issue 1, pp 217-243

228. Kerr, O. S., (2003), 'The Problem of Perspective in Internet Law', GEO Law Journal, Vol 91, pp 357

229. Kessler, G. C., (2008), 'On Teaching TCP/IP Protocol Analysis to Computer Forensics Examiners', Journal of Digital Forensic Practice, Vol 2, Issue 1, pp 43-55

230. Keyes, M., (2008), 'Statutes, Choice of Law, and the Role of Forum Choice', Journal of Private International Law, Vol 4, Issue 1, pp 14

231. Kleve, P., & Mulder, R., (2008), 'Code is Murphy's Law', International Review of Law, Computers and Technology, Vol 19, Issue 3, pp 95-107

232. Kohl, U., (2000), 'Defamation on the Internet: A duty-free zone after all? Macquarie Bank Limited & An or v Berg, Sydney Law Review, Vol 22, Issue 1

233. Kohl, U., (2002), 'Eggs, jurisdiction and the internet', ICLQ, Vol 51, pp 557

234. Koopmans, T., (1991), 'Thinking and doing the right', Legal dotted work, Deventer (Kluwer), Vol 67

235. Krishan, S., (2013), 'Lord Lester's Defamation Bill: Striking a Balance?', Entertainment Law Review, Vol 23, Issue (2), pp 25

236. Kristen, E., (2017), 'Data Extraterritoriality', Texas Law Review, Vol 95, pp 145-160

237. Kumar, S., (2003), 'Website Libel and the Single Publication Rule', The University of Chicago Law Review, Vol 70, Issue 2, pp 639-662

238. Kuner, C., (2010), 'Internet Jurisdiction and Data Protection Law: An International Legal Analysis', International Journal of Law and Information Technology, Vol 2, Issue 18, pp 176-195 (Part 1)

L

239. Lamond, G., (2014), 'Analogical Reasoning in the Common Law', Oxford Journal of Legal Studies, Vol 34, pp 567-581

240. Land, M., (2013), 'Toward an International Law of the Internet', Harvard International Law Journal, Vol 54, Issue 393, pp 399-401

241. Larson, R. G., & Godfread, P. A., (2011), 'Bringing John Doe to Court: Procedural Issues in Unmasking Anonymous Internet Defendants', Wm. Mitchell L. Rev., Vol 38, pp328

242. Lautman, R., & Curran, K., (2011), 'The Problems of Jurisdiction on the Internet', International Journal of Ambient Computing and Intelligence, Vol 3, Issue3, pp 36-42

243. Lavorgna, A., (2015), 'Organised crime goes online: Realities and challenges', Journal of Money Laundering Control, Vol 18, Issue 2, pp 153-168

244. Law, C., (2016), 'Legal Systems of the World', Civil Law Newsletter, Issue 4, pp 3

245. Lawrence, B., & Chung, M., (2003),' The Layers Principle: Internet Architecture and the Law', University of San Diego, Public Law and Legal Theory Research Paper 55

246. Leong, N., & Morando, J., (2016), 'Communication In Cyberspace', North Carolina Law Review, Vol 94, Issue 1, pp 105-162

247. Lessig, L., (1999), 'The law of the horse: What cyber law might teach', Harvard L Rev, Vol 117, pp 501

248. Lessig, L., (2000), 'Code: And other laws of cyberspace, version 2.0, pp 1-8

249. Lewis, C. B., (2015), 'Social Media: Cyber Trap Door to Defamation - Jamaica's Defamation Act 2013 Examined', Masaryk University Journal of Law and Technology, Vol 9, Issue 1, pp 65-84

250. Lewis, E.P., (2009), 'Unmasking Anon 12345: Applying an Appropriate Standard when Private Citizens Seek the Identity of Anonymous Internet Defamation Defendants', Uni. Of Illusion Law Rev, Issue 3, pp 947-973

251. Lewis, J. A., (2010), 'Sovereignty and the Role of Government in Cyberspace', Brown Journal of World Affairs, Vol xvi, issue ii

252. Libel, N., (1961), 'Barriers to expanding personal jurisdiction', The University of Chicago Law Review, Vol 29, pp 569-585

253. Lidsky, L.B., (2000), Silencing John Doe: Defamation & discourse in cyberspace. Duke Law Journal, Vol 49, Issue 4, pp 855-946

254. Linarelli, J., (2016), 'Toward a Political Theory for Private International Law', Duke J Comp & Int Law, Vol 26, pp 299-336

255. Lino, S., (2015), 'Cyberspace regulation: Cesurist and Traditionalists', Journal of International Relations, Vol 6, Issue 1, pp 86-99

256. Loble, S., (1997), 'Jurisdiction and Evidence: An English Perspective', ILSA J. Int'l & Comp. L., Vol 4, pp 489

257. Lodder, A. R., (2013), 'Ten Commandments of Internet Law Revisited: Basic Principles for Internet Lawyers, Information & Communications Technology Law, Vol 22, Issue 3, pp 264-276

258. Lodder, A., R., (2015), 'Analysing Approaches to Internet Jurisdiction based on a model of Harbours and the high seas, International Review of Law, Computers & Technology, Vol 29, Issue 3, pp 266-282

259. Long, A. B., (2016), 'The Lawyer as Public Figure For First Amendment Purposes', Boston College Law Review, Vol 57, Issue 5, pp 1543-1597

260. Lorenzen, E. G., (1941), 'The Qualification, Classification, or Characterization Problem in the Conflict of Laws', The Yale Law Journal, Vol 50, Issue 5, pp 743-761

261. Lorenzen, G., (1943), 'The Logical and Legal Bases of the Conflict of Laws', The Yale Law Journal, Vol 52, Issue 3, pp 680-683

262. Lucchi, N., (2014), 'Internet content governance and human rights', Vanderbilt Journal of Entertainment and Technology Law, Vol 16, Issue 4, pp 809

263. Lundmark, T., & Waller, H., (2017), 'Using statutes and cases in common and civil law', Transnational Legal Theory, Vol 7, Issue 4, pp 429-41

264. Lutzi, T., (2017), 'Internet cases in EU private international law: Developing a coherent approach', The International and Comparative Law Quarterly, Vol 66, Issue 3, pp 687

M

265. Magermans, A., (2004), 'Architecture and cyberspace', Intelligent Agent, Vol 4, Issue 3

266. Maier, H. G., (1982), 'Extraterritorial jurisdiction at a crossroads: An intersection between public and private international law', The American Journal of International Law, Vol 76, Issue 2, pp 280-320

267. Manea, A. C., (2017), 'The security of personal data of users in online socialization networks: Legal aspects', Transilvania University of Brasov, Series VII, Social Sciences Law, Vol 10, Issue1, pp 179-186

268. Mangan, D., (2015), 'Regulating for Responsibility: Reputation and Social Media', International Review of Law, Computers and Technology, Vol 29, Issue 1, pp 16-32

269. Manjikian, M.M., (2010), 'From global village to virtual battlespace: The colonizing of the internet and the extension of realpolitik', International Studies Quarterly, Vol 54, Issue 2, pp 381-401

270. Mann, D., & Sutton, M., (1998), 'Net crime: More Change in the Organization of Thieving', British Journal of Criminology, Vol 38, Issue 1, pp 201-229

271. Maras, M., (2017), 'Social media platforms: Targeting the "found space" of terrorists', Journal of Internet Law, Vol 21, Issue 2, pp 3

272. Marcus, E. T., (1983), 'Group Defamation and Individual Actions: A New Look at an Old Rule', 71 Cal. L. Rev., Vol 71, Issue 5, pp 1532-1556

273. Marton, E., (2017), 'Violations of personality rights through the Internet: jurisdictional issues under European law (Nomos 2016), Ch. 2, pp 55-70

274. Mason, G., & Czapski, N., (2017), 'Regulating cyber-racism', Melbourne University Law Review, Vol 41, Issue 1, pp 284-340

275. Mathias, M., & Daith, M., (2012), 'Mapping Legal Research', Cambridge Law Journal, Vol 71, Issue 3, pp 651-676

276. Matthew J. D., (2009), 'A Newsworthiness Privilege for Republished Defamation of Public Figures', Lowa Law Review, Vol 94, Issue 3, pp 1023-1050

277. McArdle, D., (2008), 'Computer crime: Computers – hacking – extradition – abuse of processes, Scottish Legal Action Group Journal, Vol 367, pp 130

278. McClean, J.D., (1969), Jurisdiction and Judicial Discretion, ICLQ, Vol 18, Issue 4, pp 931

279. McCrudden, C., (2006), 'Legal Research and the Social Sciences', Law Quarterly Review, Vol 122, pp 634

280. McDermott, M., (1996), 'A View from the Coalface', Socio-legal Newsletter, Vol 5, Issue 38

281. McLachlan, (2004), 'International Litigation and Reworking of Conflict of Law', L.Q.R., Vol 120, pp 580

282. McLean, D., (2002), 'Internet defamation', Communications and the Law, Vol 24, Issue 4, pp 21-38

283. Meder, J. W., (1997), 'A visit to the cyberspace mall: Who owns a website address?', Duquesne Law Review, Vol 35, Issue 4, pp 989

284. Mehren, V., (1983), 'Adjudicatory Jurisdiction: General Theories Compared and Evaluated', Boston law review, Vol 63, pp 279

285. Mehren, V., Taylor, A., (2002), 'The foundations and emergence of jurisdictional theory', Collected Courses of the Hague Academy of International Law, The Hague Academy of International Law, Vol 295

286. Meltzer, J. P., (2015), 'The Internet, Cross-Border Data Flows and International Trade', Asia & the Pacific Policy Studies, Vol 2, Issue 1, pp 90

287. Menthe, D., (1998), 'Jurisdiction in cyberspace: A theory of international spaces', Michigan Telecommunications Technology L Rev, Vol 4, pp 69

288. Messenger, A., (2015), 'False statements and actual malice: Courts rethink what's required to protect free speech; Communications Lawyer: Publication of the Forum Committee on Communications Law, American Bar Association, Vol 31, Issue 3, pp 6-9

289. Michael, D., (2017), 'A consideration of current issues in private international law', Australian Bar Review, Vol 44, Issue 3, pp 338

290. Michael, M., (2016), 'Unification of choice-of-law rules for defamation claims', Journal of Private International Law, Vol 12, issue 3, pp 492-520

291. Mills, A., (2014), 'Rethinking Jurisdiction in International Law', British Yearbook of International Law, Vol 84, Issue 1, pp 187–239

292. Mills, A., (2015), 'The Law Applicable to Cross-Border Defamation on Social Media: Whose law governs free speech in Facebookistan?', Journal of Media Law, Vol 7, Issue 1, pp 1-35

293. Mills, A., (2017), 'The 'Hague choice of court convention' and cross-border commercial dispute resolution in Australia and the Asia-pacific', Melbourne Journal of International Law, Vol 18, Issue 1, pp 1-15

294. Minow, M., (2013), 'Archetypical Legal Scholarship: A Field Guide', Journal of Legal Education, Vol 63, pp 65

295. Mittal, S., & Sharma, P., (2017), 'Enough law of horses & elephants debated, let's discuss the cyber law seriously', International Journal of Advanced Research in Computer Science, Vol 8, Issue 5

296. Monard, G., Paulsen, & Michael, I., (1959), 'Conflict of Laws', Columbia Law Review, Vol 56, Issue 7

297. Mueller, M., (2010), Networks and States: The Global Politics of Internet Governance, MIT Press, pp 239

298. Mullis, A., & Scott, A., (2009), 'Something rotten in the state of English libel law? A rejoinder to the clamour for reform of defamation', Communications Law, Vol 14, Issue 6, pp 173-183

299. Mullis, A., & Scott, A., (2012), 'The Swing of the Pendulum: Reputation, Expression and the Re-entering of English Libel Law', Northern Ireland Legal Quarterly (NILQ), Vol 63, pp 27

300. Mullis, A., & Scott, A., (2014), 'Tilting at Windmills: The Defamation Act 2013, Modern Law Review, Vol 77, pp 87

N

301. Nature, (2009), 'Unjust burdens of proof', Vol 459, Issue 7248, pp 751

302. Nocetti, J., (2015), 'Contest and conquest: Russia and global internet governance', International Affairs, Vol 91, Issue 1, pp 111-130

303. Nowak, R., Eriksson, B., & Sommers, J., (2011), 'Inferring Unseen Components of Internet Core', IEEE Journal on selected areas in communication Vol 29, Issue 9, pp 1788-1798

O

304. Obar, J.A., & Wildman, S.S., (2015), 'Social media definition and the governance challenge: An introduction to the special issue', Telecommunications policy, Vol 39, Issue 9, pp 745–750

305. Obdulio, C., (2005), 'Jurisdictional Problems in Cyberspace Defamation', International Law, Vol 6, pp 247-300

306. Oster, J., (2015), 'Communication, defamation and liability of intermediaries', Legal Studies, Vol 35, issue 2, pp 348-368

307. Osterrieder, A., (2013), 'The value and use of social media as communication tool in the plant sciences, Plant Methods, Vol 9, Issue 2, pp 9-26

P

308. Paul, J. L., (2014), 'Revenge Porn, State Law, and Free Speech', Loy., L.A. Law Review, Vol 48, pp 57- 62

309. Paul, JR., (1988), 'The Isolation of Private International Law', Wisconsin International Law Journal, Vol 7, pp 149

310. Paul, JR., (1988), 'The Isolation of Private International Law', Wisconsin International Law Journal, Vol 7, pp 149

311. Peczenik, A., (2005), 'knowledge of the law' in Enrico Pattaro (eds.), A Treatise of Legal Philosophy and General Jurisprudence, Vol 4, pp 2

312. Pelletier, N., (2016), 'The emoji that cost $20,000: Triggering liability for defamation on social media', Washington University Journal of Law & Policy, Vol 52, pp 227

313. Pelletier, N., (2018), 'The Emoji that Cost $20,000: Triggering Liability for Defamation on Social Media', Wash. U. J. L. & Policy, Vol 52, pp 227

314. Perry, R., & Zarsky, T. Z., (2014), 'Liability for online anonymous speech: Comparative and economic analyses', Journal of European Tort Law, Vol 5, Issue, 2, pp 205-256

315. Perry, S. J., & Marcum, T. M., (2016), 'Unmasking the anonymous online speaker: Balancing free speech and defamation, Labour Law Journal, Vol 67, Issue 4, pp 529

316. Pertoldi, A., Neill, J., (2017), 'Cross-border Litigation Perspective', Herbert Smith Freehills, Issue 3, pp18-22

317. Placid, R., Wynekoop, J., & Feicht, R. W., (2016), 'Twibel: The intersection of Twitter and libel', Florida Bar Journal, Vol 90, Issue 8, pp 32-45

318. Pollack, J. M., (2016), 'Getting even: Empowering victims of revenge porn with a civil cause of action', Albany Law Review, Vol 80, Issue 1, pp 353

319. Polonetsky, J., & Gray, S., (2017), 'The internet of things as a tool for inclusion and equality', Federal Communications Law Journal, Vol 69, Issue 2, pp 103-118

320. Posner, R. A., (2007), 'In Memoriam: Bernard D. Meltzer', University of Chicago Law Review, Vol 74, pp 437

321. Posner, R., (1987), 'The Decline of Law as an Autonomous Discipline: 1962-1987', Harvard Law Review, Vol 100, pp 777

322. Post, D.G., (2017), 'How the Internet is making jurisdiction sexy (again)', International Journal of Law and Information Technology, Vol 25, Issue 4, pp 249-258

323. Post, R. C., (1986), 'The social foundations of defamation law: Reputation and the Constitution', Cal. L. Rev., Vol 74, pp 691

R

324. Rahman, A., (2015), 'Personal Jurisdiction on the Internet: A Global Perspective, Journal of Internet Commerce', Vol 14, Issue 1, pp 114-122

325. Reidenberg, J., (2005), 'Technology and Internet Jurisdiction', University of Pennsylvania Law Review, Vol 153, Issue 6

326. Remien, O., (2001), 'European Private International Law, the European Community and its Emerging Area of Freedom, Security and Justice', Common Market Law Review, Vol 38

327. Reymond, M., (2013), 'Jurisdiction in Case of Personality Torts Committed over the Internet', British Year Book of Private International Law, Vol 14, pp 205, 210–11

328. Rice, D. T., (2000), 'Jurisdiction in Cyberspace: which law and forum apply to securities transactions on the Internet', University of Pennsylvania Journal of International Economic Law, Vol 21, Issue 3, pp 585-658

329. Rigaux, F., (2000), 'Codification of Private International Law: Pros and Cons', Louisiana Law Review, Vol 4, pp 1321

330. Robertson, Burke, and Charles, (2017), 'The Business of Personal Jurisdiction', Case Western Reserve Law Review, Vol 68; Case Legal Studies Research Paper No. 2017-11, pp 775

331. Rogerson, P., (2017), 'Economic torts in the conflict of laws', The Cambridge Law Journal, Vol 76, Issue 2, pp 240

332. Roilliard, B., (2007), 'Jurisdiction and choice of law rules for defamation actions in Australia following the Gutnick case and the Uniform Defamation Legislation', Australian Int'l Law Journal, Vol 14, pp 185

333. Rooksby, J. H., (2018), 'Gain insight into preventing, addressing claims of defamation', Campus Legal Advisor, Vol 18, Issue 6, pp 1-5

334. Roos, A., & Slabbert, M., (2014), 'Defamation on Facebook: Isparta v Richter 2013 6 Sa 529 (GP)', PER/PELJ, Vol 16, Issue 6, pp 2843-2861

335. Rose, K., & Pryal, G., (2011), 'A short guide to writing about law', (Longman Publisher, US), pp xv Rogerson, P., (2010), 'Private International Law – Jurisdiction', the Cambridge Law Journal, Vol 69, Issue 3, pp 452-455

336. Rosenne, S., (2003), 'The Perplexities of Modern International Law', Private International Law, RCADI Tom III, pp 20-29

337. Roth, A. L., (2016), 'Upping the ante: Rethinking anti-SLAPP laws in the age of the internet', Brigham Young University Law Review, Vol 6, Issue 2, pp 741

338. Rothfeld, C., (2015), 'The Surprising Case Against Punitive Damages in Libel Suits Against Public Figures', Yale Law & Policy Review, Vol 19, Issue 1, pp 16

339. Royster, L. K., (2017), 'Fake news: Potential solutions to the online epidemic', North Carolina Law Review, Vol 96, Issue 1, pp 271 at 282

340. Rubin, E. L., (1988), 'The practice and discourse of legal scholarship', Michigan Law Review, Vol 86, Issue 8, pp 1835-1905

341. Rukundo, S., (2018), ''My President is a Pair of Buttocks': The limits of online freedom of expression in Uganda', International Journal of Law and Information Technology, eay009, Issue 0, pp 1–20

S

342. S. E. I., (2003), 'Conflicts between Community and National Laws: An Analysis of the British Approach', Sussex European Institute, SEI Working Paper No 66

343. Saadat, M., (2005), 'Jurisdiction and the Internet after Gutnick and Yahoo!', Journal of Information Law & Technology, Vol 1, pp 32

344. Sadl, U., & Olsen, H. P., (2017), 'Can quantitative methods complement doctrinal legal studies?: Using citation network and corpus linguistic analysis to understand international courts', Leiden Journal of International Law, Vol 30, Issue 2, pp 1-23

345. Samson, E., (2012), 'The Burden to Prove Libel: A Comparative Analysis of Traditional English and U.S. Defamation Laws & the Dawn of England's Modern Day', Cardozo Journal of International and Comparative Law, Vol 20, Issue 3

346. Sapna, K., (2003), 'Website Libel and the Single Publication Rule', University of Chicago Law Review, Vol 70, Issue 2, Article 5, pp 638-263

347. Schiavello, A., (2011), 'Neil MacCormick's second thoughts on legal reasoning and legal theory: A defence of the original view', Ratio Juris, Vol 24, Issue 2, pp 140-155

348. Schiller, D., (2014), 'Rosa Luxemburg's Internet?', International Journal of Communication, Vol 8

349. Schivinski, B., & Dabrowski, D., (2016), 'The effect of social media communication on consumer perceptions of brands, Journal of Marketing Communications, Vol 22, Issue2, pp 189-214

350. Schmitt, M. N., & Vihul, L., (2017), 'Respect for sovereignty in cyberspace', Texas Law Review, Vol 95, Issue 7, pp 1639-1670

351. Schultz, T., (2008), 'Carving up the Internet: Jurisdiction, Legal Orders, and the Private/Public International Law Interface', The European Journal of International Law, Vol 19, Issue 4, pp 799-839

352. Seidenberg, S., (2017), 'lies and libel', ABA Journal, Vol 103, Issue 7, pp 48

353. Shaw, R.S., (2017), 'There is no silver bullet: solutions to Internet jurisdiction', International Journal of Law and Information Technology, Vol 25, Issue 4, pp 283-308

354. Smits, J. M., (2017), 'What is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research', New York Rethinking Legal Scholarship: A Transatlantic Dialogue, pp 207-228

355. Smolla, A.R., (1983), 'Let the Author Beware: The Rejuvenation of the American Law of Libel', University of Pennsylvania Law Review, Vol 1

356. Softness, N., (2016), 'Terrorist communications: Are Facebook, twitter, and google responsible for the Islamic state's actions?', Journal of International Affairs, Vol 70, Issue 1, pp 201-21

357. Sommer, J., (2000), 'Against cyberlaw', Berkeley Tech L J, Vol 15, pp 1145

358. Stein, A.R., (1998), 'The unexceptional problem of jurisdiction in cyberspace', Intl Lawyer, Vol 32, pp 1167

359. Steven, R., (2011), 'Google Sets Sail: Ocean-Based Server Farms and International Law', CONN. Law Review, Vol 43, pp 716-19

360. Stewart, D., (2009), 'Private International Law: A Dynamic and Developing Field', University of Pennsylvania Journal of International Law, pp 1121-1131

361. Stockl, A., (2003), 'The Internet, Cyberspace, and Anthropology', Cambridge Anthropology, Vol 23, Issue 3, pp 67-78

362. Stone, P., (2008), 'EU Private International Law: Harmonization of Laws', (2nd Ed, Edward Elgar Publishing, Cheltenham), pp 46, 198

363. Strate, L., (1999), 'The Varieties of Cyberspace: Problems in Definition and Delimitation', Western Journal of Communication, Vol 63, Issue 3, pp 385

364. Stromdale, S., (2005), 'Finders Keepers: Who should run the Internet', Electronic Business Law, Issue 10

365. Svantesson, D. J. B., (2016), 'International law and order in cyberspace—cloud computing and the need to revisit the foundations of "jurisdiction", Aspen Review Central Europe, Vol 1, pp 88 – 92

366. Svantesson, D., (2012), 'Time for the Law to Take Internet Geolocation Technologies Seriously', Journal of Private International Law, Vol 8, pp 473

367. Svantesson, D., (2013), 'A ''Layered Approach' to the Extraterritoriality of Data Privacy Laws', International Data Privacy Law, Vol 3, Issue 4, pp 278

368. Svantesson, D., (2014), 'The Extraterritoriality of EU Data Privacy Law - Its Theoretical Justification and Its Practical Effect on U.S. Businesses' Stanford Journal of International Law, Vol 50, pp 53

369. Svantesson, D., (2015), 'The holy trinity of legal fictions undermining the application of law to the global Internet', International Journal of Law and Information Technology, Vol 23, Issue 3, pp 219-234

370. Svantesson, D.J.B., (2011), 'Recent Developments in Private International Law Applicable to the Internet', Journal of Internet Law, Vol 15, Issue 6, pp 26-35

371. Svantesson, D.J.B., (2016), 'Nostradamus lite - selected speculations as to the future of internet jurisdiction', Masaryk University Journal of Law and Technology, Vol 30, Issue 1, pp 47 – 72

372. Szaszy, S., (1966), 'The Basic Connecting Factor in International Cases in the Domain of Civil Procedure', the International and Comparative Law Quarterly, Vol 15, Issue 2, pp 436-456

373. Szigeti, P. D., (2017), 'The illusion of territorial jurisdiction', Texas International Law Journal, Vol 52, Issue 3, pp 369-399

T

374. Taylor, M., (2017), 'Empowering Engagement: Understanding Social Media User Sense of Influence', International Journal of Strategic Communication, Vol 11, Issue 2, pp 148-164

375. Teitz, L.E., (2004), 'Both Sides of the Coin: A Decade of Parallel Proceedings and Enforcement of Foreign Judgments in Transnational Litigation, Roger Williams UL Rev, Vol 10, Issue 1

376. Thelwall, M.A., (2014), 'Social network sites: Users and uses', Advances in Computers, Vol 76, Issue 4, pp 19-73

377. Thomas F. B., (2012), 'Social media: The end of civilisation?', The Warrane Lecture, University of New South Wales, Sydney, pp 7

378. Timothyy B. N., (1998), 'Personal Jurisdiction and Cyberspace: Establishing Precedent in a Borderless Era', Common Law Conspectus, Vol 6, pp 101

379. Todd, D., (2018), 'Beneath sovereignty: Extraterritoriality and imperial internationalism in nineteenth-century Egypt', Law and History Review, Vol 36, Issue 1, pp 105-137

380. Townes, M., (2012), 'The spread of TCP/IP: How the Internet became the Internet', Millennium, Vol 41, Issue 1, pp 43-64

381. Trachtman, J. P., (1994), 'Conflict of Laws & Accuracy in the Allocation of Government Responsibility', Vand. J. Transnational Law, Vol 26, pp 997-98 at 975

382. Trammell, A., & Bambauer, D., (2015), Personal Jurisdiction and the "Interwebs", Cornell Law Review, Vol 1129, Issue 100

383. Tranter, K., (2015), 'Citation Patterns within the Australian Law Reform Commission Final Reports 1992-2012', University of New South Wales Law Review, Vol 38, Issue 1, pp 318

384. Troiano, M. A., (2006), 'The New Journalism? Why Traditional Defamation Laws Should Apply to Internet Blogs', American University Law Review, Vol 55, Issue 5, pp 1447-1483

385. Tsang, K., (2017), 'Double actionability: An outdated rule in modern times', UMKC Law Review Vol 86, Issue 1, pp 73-110

386. Turner, R., (2014), 'Internet Defamation Law & Publication by Omission: A Multi-Jurisdictional Analysis', UNSW Law Journal, Vol 37, Issue 1, pp 34-64

387. **U**

V

388. Valdovinos, I. A., Arturo J. P., Villalba, G., & Kim, T., (2017), 'BATCP: Bandwidth-aggregation transmission control protocol', Symmetry, Vol 9, Issue 8, pp 167

389. Vamialis, A., (2013), 'Online defamation: Confronting anonymity', International Journal of Law and Information Technology, Vol 21, Issue 1, pp 31-65

390. Vartanian, T., (2000), 'Whose laws rule the internet? A U.S. perspective on the law of jurisdiction in cyberspace', International Law Forum, Vol 2, Issue 3, pp 196-201

391. Vihul, L., & Schmitt, M. N., (2017), 'Respect for sovereignty in cyberspace', Texas Law Review, Vol 95, Issue 7, pp 1639-1670

392. Vraga, E. K., Bode, L., Borah, P., & Shah, D. V., (2014), 'A new space for political behaviour: Political social networking and its democratic consequences', Journal of Computer-Mediated Communication, Vol 19, pp 414–429

393. Vural, S., Wang, N., (2017), 'Caching transient data in internet content routers', IEEE/ACM Transactions on Networking (TON), Vol 25, Issue 2, pp 1048-1061

W

394. Walton, B. A., (2017), 'Duties owed: Low-intensity cyberattacks and liability for transboundary torts in international law', Yale Law Journal, Vol 126, Issue 5, pp 1460-1519

395. Wang, F., (2008), 'Obstacles and solutions to internet jurisdiction: A comparative analysis of the EU and US Laws', Journal of International Commercial Law & Technology, Vol 3, Issue 4, pp 233-241

396. Wang, F., (2010), 'Internet Jurisdiction', (Cambridge University Press, UK), pp 6

397. Warshaw, A., (2006), 'Uncertainty from Abroad: Rome II and the Choice of Law for Defamation Claims', Brooklyn Journal of International Law, Vol 32, Issue 1, pp 270-312

398. Watson, R., Roldan, R., & Faza, A., (2017), 'Toward Normalization of Defamation Law: The UK Defamation Act of 2013 and the US SPEECH Act of 2010 as Responses to the Issue of Libel Tourism, Vol 22, Issue 1, pp 63

399. Whitbourn, M., (2018), 'NSW to review defamation laws as social media claims soar'; online

400. William, G., (2015), 'Rules for Offline and Online in Determining Internet Jurisdiction, Global Overview and Colombian Cases, International Law, Vol 26, pp 13-62

401. Wittzack, R. U., (2010), 'Principles of International Internet Law', Charlottesville: German Law Journal, Vol 11, Issue11, pp 245-1263

402. Wolff, T. B., (2017), 'Choice of law and jurisdictional policy in the federal courts', University of Pennsylvania Law Review, Vol 165, Issue 7, pp 1847

403. Wolfsfeld, G., Segev, E., & Sheafer, T., (2013), 'Social media and the Arab Spring: Politics comes first', The International Journal of Press/Politics, Vol 18, Issue 2, pp 115-137

404. Woods, A., (2016), 'Against Data Exceptionalism', Stanford Law Review, Vol 68, pp 729

X

405. Xu, L., Xu, K., Jiang, Y., Ren, F., & Wang, H., (2017), 'Throughput optimisation of TCP in cast congestion control in large-scale data centre networks', Computer Networks the International Journal of Computer and Telecommunications Networking, Vol 124, pp 46

Y

406. Yew, K., (2015), 'Reputation and Defamatory Meaning on the Internet-Communications, Contexts, and Communities', Singapore Academy Law Journal, Vol 27, Special Issue, pp 694

407. Yntema, H. E., (1953), 'The Historic Bases of Private International Law', The American Journal of Comparative Law, 297-317

408. Young, H., (2016), 'Public institutions as defamation plaintiffs', Dalhousie Law Journal, Vol 39, Issue 1, pp 249

Z

409. Zach, S., & David, L., (2011), 'Public Figure-hood in the Digital Age', Journal on Telecomm & High Tech., Vol 9, Issue 2, pp 403

410. Zeitzoff, T., (2017), 'How social media is changing conflict', Journal of Conflict Resolution, Vol 61, Issue 9, pp 1970-1991

411. Zekos, G. I., (2002), 'Legal problems in cyberspace', Managerial Law, Vol 44, issue 5, pp 45-102

412. Zhou, Z., Zhou, Y., Li, D., & Li, X., (2016), 'Perceived school climate and adolescent Internet addiction: The mediating role of deviant peer affiliation and the moderating role of effortful control', Computers in Human Behaviour, Vol 60, pp 54-61

413. Zimmermann, A., (2014), 'International Law and 'Cyberspace Space', European Society of International Law, Vol 3, Issue 1

414. Zipursky, B. C., (2016), 'The Monsanto Lecture: Online Defamation, Legal Concepts, and the Good Samaritan', Valparaiso University Law Review, Vol 51, Issue 1, pp 57

415. Zitter, J., (2000), 'Annotation, Liability of Internet Service Provider for Internet or E-mail Defamation, A.L.R., Vol 5, Issue 84, pp 169

B.3.: Electronic (media) resources

1) BBC News (2018) http://www.bbc.co.uk/news/world-us-canada-44308890
2) Bingireki, E., (2016), 'Defamation in Tanzania'; Available online at https://www.linkedin.com/pulse/defamation-social-media-cyber-legal-perspective-benedict-ishabakaki
3) Cassidy, J., (2006), 'Me Media: How hanging out on the Internet became big business', New Yorker, available online
4) DiBenedetto, M., (2017), 'Trump Suits: Melania Sues the Internet', Seton Hall Law, eRepository @ Seton Hall
5) Elkins, D., (2017), 'No jurisdiction from social media posts', Virginia Lawyers Weekly; online at https://valawyersweekly.com/
6) Erbsen, A., (2015), 'Personal Jurisdiction Based on Intangible Harm, The Journal of Things We Like Lots', Available online at: http://courtslaw.jotwell.com/personal-jurisdiction-based-on-intangible-harm/
7) Evans, J., (2006), 'ISP liability for defamation?', Periodical Publishers Association, http://www.ppa.co.uk/ (Assessed 8th March 2018)
8) Fantato, D., (2018), 'Martin Lewis to sue Facebook over adverts', The Financial Times Ltd, FTAdviser.Com
9) George, S., (2017), 'Social Media Policy', NWU, File reference 6P/6.2.10
10) Gibson, J., (2014), 'It came from Cyberspace: Defamation Law and the Internet', NSW State Legal Conference: Session 16
11) Godara, S., (2013), 'Defamation in Cyber Space: Who do you sue?', International Conference on Information Warfare and Security, ICIW 8
12) Gupta, S.S., Thakral, A., Choudhury, T., (2018), 'Social Media Security Analysis of Threats and Security Measures', International Conference on Communications, No 12, Comm 8430168
13) Haines, AD., (2002), 'The impact of the internet on the Judgments Project: Thoughts for the future', (Hague Conference on Private International Law, Preliminary Document No 17
14) Howard, S., (2007), 'Defamation of Corporate entities in England', Bird & Bird, available online at www.lexology.com
15) Kulesza, J., (2008), 'Internet Governance and Jurisdiction of States: Justification of the Need for an International Regulation of Cyberspace', Global Internet Governance Academic Network, Annual Symposium
16) Laidlaw, E. (2017), 'Are We Asking Too Much from Defamation Law? Reputation Systems, ADR, Industry Regulation and Other Extra-Judicial Possibilities for Protecting Reputation in the Internet Age', University of Calgary law review, SSRN no 3059954
17) Lambach D., (2016), 'The Territorialisation of Cyberspace', Conference Paper: Heidelberg, the Internet and Politics group of the German Association of Political Science
18) Law Commission (1990), 'Private international law: Choice of law in tort and delict', ISBN 0102065918, HC 65

19) Lima, M., (2018), 'Future Today: The Data Centres Of 2025', online Url: https://data-economy.com/future-today-the-data-centres-of-2025/
20) Marwick, A., & Miller, R., (2014), 'Online harassment, defamation, and hateful speech: A primer of the legal landscape', Fordham Centre on Law and Information Policy Report No 2
21) Michaels, R., (2017), 'Jurisdiction, Foundation', Elgar Encyclopedia of Private International Law, pp 28
22) Mojolaoluwa O., (2017), 'Private International Law and the Doctrine of Lis Alibi Pendens' online
23) Morse, D., (2017), 'Melania Trump Reaches Settlement in Libel Lawsuit Against Maryland Blogger', Washington Post (Assessed 28th Nov 2017)
24) Peter, J., (2015), 'Floating data center is launched'; online Url: http://www.datacenterdynamics.com/content-tracks/power-cooling/floating-data-center-is-launched/95209.fullarticle [28th July 2018]
25) Pham, S., & Riley, C., (2017), 'Banned! 11 things you won't find in China': Available online at: CNNTech.com
26) Phelan, D., (2016), 'Facebook case shows social media has same legal risks as print'; online
27) Rajan, A., (2018), 'Martin Lewis seeks damages for 'fake' Facebook ads'; online
28) Puddephatt, A., (2011), 'The Importance of Self-Regulation of the Media in Upholding Freedom of Expression', UNESCO, Communication and Information Debate Series, No 9, BR/2011/PI/H/4
29) Rosenberg, D., (2018), 'How 5G will change the world', World Economic Forum Annual Meeting, 23-26 January, Davos-Klosters, Switzerland
30) Rushton, K., (2012), 'Legal claims can be served via Facebook, High Court judge rules', Media, telecoms and technology editor, The Telegraph
31) Salisbury, B., (2016), ′Who Rules the Net: Internet Governance and Jurisdiction′ online
32) Smits, J., (2012), What Do Legal Academics Do? Elgar blog. Online Url http://elgarblog.wordpress.com/2012/08/15/what---do---legal---academics---do/
33) Smits, J.M., (2015), 'What is legal doctrine? On the aims and methods of legal-dogmatic research', Maastricht European Private Law Institute, M-EPLI, Working Paper No. 2015/06
34) Sweney, M., (2015), 'Facebook and Twitter libel actions rise as total defamation cases hit six-year low', online journal
35) Tamunokuro, G., (2016), 'Limitations on the Freedom of Speech by Defamation in UK Law', online Academia.edu
36) Tanada Y.J., (2001), Global Treaty Tames the Web, Business World; Available online
37) Tieu, H., (2012), 'Substituted service of legal documents via Facebook: "like" or "unlike" by Australian courts', Colin Biggers & Paisley Lawyers, online

38) Waldmeir, P., (2002), 'Borders Return to the Internet', The Financial Times
39) Wilson, B., (2017), 'Libel, privacy breaches and harassment on Snapchat', Media Law Blog online
40) Wilson, T., (2015), 'Twitter and Facebook users need grasp of defamation law', online
41) Zephoria (2018), 'Live stats'; https://zephoria.com/top-15-valuable-facebook-statistics/
42) Zuckerman, E., (2014), 'Susan Benesch on dangerous speech and counter-speech, online blog

B.4.: Relevant Websites

1. Acts of the UK Parliament
2. Administrative Codes and Registers, Internet Rules
3. Anderson's Directory of Law Reviews and Scholarly Legal Publications
4. ASIL Guide to Electronic Resources for International Law (on Topical research)
5. Central Intelligence Agency, World Factbook
6. Committee on the Judiciary, Committee Documents
7. Comparative & Foreign Law Guides
8. Council of Europe
9. Council of the European Union
10. Court Rules, Forms and Dockets
11. Court Web Sites (National Center for State Courts)
12. Courts.net
13. EU Court case law
14. www.curia.europa.eu/en/content/juris/index.htm
15. EUR-Lex (in English)
16. European Court of Human Rights
17. European Court of Justice
18. FindLaw Legal News
19. FindLaw Legal Subjects
20. Hein Online
21. Information Sources for Legislative Research (THOMS)
22. Info sources Publishing, Law TRIO
23. Institute of International Commercial Law
24. International Court of Justice
25. JSTOR
26. Law and Technology Resources for Legal Professionals (LLRX)
27. Law by Source: Global
28. Law Lists
29. Legal Associations and Organizations
30. Legal News (Law.Com)
31. Legal News (FindLaw.com)
32. Legal Research sites

33. LexisNexis Academic
34. National Law Journal
35. Online Directory of Law Reviews and Scholarly Legal Periodicals
36. ProQuest
37. Public and Private Laws
38. SSRN (Social Science Research Network)
39. Statute Law Database, United Kingdom
40. Treaties and International Agreements Online
41. U.K. Parliament
42. U.K. Statute Law Database
43. U.K. Statutory Instruments
44. U.N. - Index to United Nations Documents and Publications
45. Web of Knowledge
46. West Legal Directory
47. Westlaw
48. World Trade Organization

List of Appendixes

Appendix – 1: RISE IN LIBEL CLAIMS

Claims issued in London (QB)	Defamation Claims Issued in London	% of all London (QB) Claims issued	£15-50k	£>50k	No Value Stated	
2017	4,319	156	4.00	37	113	6
2016	4,123	112	3.00	42	60	10
2015	4,869	135	3.00	40	71	54
2014	5,417	227	4.00	52	119	56
2013	5,186	142	3.00	37	56	49
2012	5,549	186	3.00	65	60	61
2011	4,726	165	3.49	28	61	76
2010	4,864	158	3.24	27	47	84
2009	5,694	298	5.23	52	62	184
2008	5,173	259	5.00	43	77	139
2007	4,794	233	4.86	43	45	145
2006	4,246	213	5.02	24	39	150
2005	3,841	252	6.56	43	70	139
2004	4,292	267	6.22	30	31	206
2003	3,514	190	5.41	22	15	153
2002	4,394	128	2.91	1	1	126
2001	5,122	220	4.30			
2000	5,599	241	4.30			

Source info: https://inforrm.org/2018/06/26/judicial-statistics-2017-issued-defamation-claims-up-by-40-highest-for-three-years/ & https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714286/civil-justice-statistics-quarterly-jan-mar-2018.pdf [Assessed 16th July 018]

Appendix – II: REFERENCING / HOUSE STYLE

This thesis explored legal themes using 'doctrinal research'. There referencing style is based on the recommended referencing system of Bradford university law school using footnotes and traditional bibliography (Harvard Brad 2012). The same system is adapted to cite court cases. This thesis also used this system to reference persuasive cases of other foreign court judgments. Judges are referenced with their in-court title at the time of making or writing the statement, for example, Queens Council (QC), Mr Justice (J) or Lord Justice (LJ). Direct quotations have been used to re-emphasised a particular issue with proper acknowledgment of the authors. This referencing style is uniformly applied throughout this thesis for quoting the work from, websites, blogs, articles and other scholarly writings. Newspaper and other online publication titles are non-italicised in the text. Similarly, hyperlinks have been removed to make the thesis read well. The dates to assess the websites have been updated and re-assessed according to the visit date.

Appendix– III: SOCIAL MEDIA VICTIMS

1. Steven Rudderham[1869] received death threats after Facebook accusations that he was a paedophile and he committed suicide
2. Sarah Richardson[1870] was killed for changing her Facebook status to 'single'.
3. Mashal Khan[1871] was killed in a Pakistan University because someone accused him for a blasphemous Facebook status
4. Anita Sarkeesian[1872] was accused of being a fraud on a website. Her family received death and rape threats from anonymous users.
5. Sunil Tripathi's[1873] family was threatened because somebody falsely accused him on Reddit of being the Boston Bomber

[1869] Webb, S., (2013), 'Father 'Driven to Suicide After He Was Wrongly Accused of Being a Paedophile on Facebook', http://www.dailymail.co.uk/news/article-2329453/Father-driven-suicide-accusedpaedophile-Facebook.html

[1870] http://www.dailymail.co.uk/news/article-1126872/Father-stabbed-estranged-wife-death-changed-Facebook-status-single.html

[1871] BBC (2017), 'Pakistan student killed over 'blasphemy' on university campus'; available online https://www.bbc.co.uk/news/world-asia-39593302 [Assessed 13th July 2018]

[1872] Malone, L., (2015), 'A Breakdown of Anita Sarkeesian's Weekly Rape and Death Threats', http://www.vocativ.com/culture/society/anita-sarkeesian-threats/

Appendix – IV: PRACTICE DIRECTION

PRE-ACTION CONDUCT AND PROTOCOLS

Title	Number
Introduction	Para. 1
Objectives of pre-action conduct and protocols	Para. 3
Proportionality	Para. 4
Steps before issuing a claim at court	Para. 6
Experts	Para. 7
Settlement and ADR	Para. 8
Stocktake and list of issues	Para. 12
Compliance with this practice direction and the protocols	Para. 13
Limitation	Para. 17
Protocols in force	Para. 18

Appendix – V: THE MEANING OF DEFAMATORY WORDS

SIR ANTHONY CLARKE MR PRINCIPLES[1874]

1. The governing principle is reasonableness
2. The hypothetical reasonable reader is not naive but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available
3. Over-elaborate analysis is best avoided
4. The intention of the publisher is irrelevant
5. The article must be read as a whole, and any 'bane and antidote' taken together
6. The hypothetical reader is taken to be representative of those who would read the publication in question
7. In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, 'can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation'
8. It follows that 'it is not enough to say that by some person or another the words might be understood in a defamatory sense

[1873] Kang, J., (2013), 'Should Reddit Be Blamed for the Spreading of a Smear?'; available online http://www.nytimes.com/2013/07/28/magazine/should-reddit-be-blamed-for-the-spreading-of-a-smear.html [Assessed 13th July 2018]

[1874] Jeynes v News Magazines Ltd and Another [2008] CA

Appendix – VI: THE DEFAMATION ACT 2013

(Section 1)..... Serious harm

(Section 2)..... Truth

(Section 3)..... Honest opinion

(Section 4)..... Publication on a matter of public interest

(Sections 5, 10 and 13).....Operators of websites and persons who are not the author, editor or publisher of a statement complained

(Section 6)..... Peer-reviewed statements in scientific or academic journals

(Section 7)..... Expansion of statutory privilege

(Section 8)..... Single publication rule

(Section 9)..... Action against a person not domiciled in the EU

(Section 11)..... Trial to be without a jury unless the court orders otherwise

(Section 12)…. Power of court to order a summary of its judgment to be published

Appendix – VII: EXAMPLES OF SOCIAL MEDIA APPS

- Electronic communication: Blackberry Voice Call, Facebook Messenger, WhatsApp, Google Hangouts, MSN Messenger, chat rooms, email
- Collaboration tools: Wikipedia, Wikitravel, Wikibooks
- Group buying: Groupon, Living Social, Crowd savings
- Location-based services: Check-ins, Facebook Places, Foursquare, Yelp
- Micro-blogging sites: Twitter, Tumblr, Snapchat, Posterous
- Media content (YouTube, Flick)
- Publishing tools: WordPress, Blogger, Squarespace
- Personal broadcasting tools: Blog Talk radio, Ustream, Livestream
- Photo sharing sites: Flickr, Instagram
- Rating/review sites: Amazon ratings, Angie's List
- Social networking sites: Facebook, Google Plus, Cafe Mom, Gather
- Social bookmarking (news-aggregation): Digg, Delicious, Pinterest
- Video sharing sites: YouTube, Vimeo, Viddler, Vine
- Virtual worlds: Second Life, World of Warcraft, Farmville
- Widgets: profile badges, like buttons
- Social networking (Facebook, Twitter, LinkedIn, Google+)
- Blogging (Tumblr, World Process)
- Information sharing (Wiki How, Wikipedia, Quora)
- Consumer Review (TripAdvisor, Yelp)